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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

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7 DELPHI CORPORATION,

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9 Debtor.

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13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 April 7, 2006

18 1:49 p.m.

19

20 B E F O R E:

21

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

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2

3 MOTION for Relief from Stay filed by Victor J.
4 Mastromarco Jr. on behalf of H.E. Services
5 Company, Robert Backie.

6

7 MOTION for Relief from Stay filed by Victor J.
8 Mastromarco Jr. on behalf of Cindie Palmer.

9

10 MOTION for Relief from Stay filed by Gene T.
11 Moore on behalf of Gene T. Moore.

12

13 OBJECTION to Motion For the Appointment of A
14 Fee Committee Contained in the Motion For
15 Administrative Order Under 11 U.S.C. Section
16 331 (i) Establishing Procedures For Interim
17 Compensation and Reimbursement of Expenses of
18 Professionals and (ii) Setting A final Hearing
19 Thereon filed by Tracy Hope Davis on behalf of
20 United States Trustee.

21

22 MOTION for Relief from Stay The Offshore
23 Group's Motion Pursuant to Bankruptcy Code
24 Sections 362(d)(1) and 553 for Order Lifting
25 the Automatic Stay to Permit the Offshore

1 DELPHI CORPORATION

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2 Group to Exercise Right of Setoff filed by

3 Kasey C. Nye on behalf of Offshore

4 International, Inc.

5

6 MOTION to Approve Motion For Order Under 11

7 U.S.C. Sections 107(b), 501, 502, And 1111(a)

8 And Fed. R. Bankr. P. 1009, 2002(a)(7),

9 3003(c)(3), And 5005(a) Establishing Bar Dates

10 For Filing Proofs Of Claim And Approving Form

11 And Manner Of Notice Thereof filed by John Wm.

12 Butler Jr. on behalf of Delphi Corporation.

13

14 MOTION for Relief from Stay To Proceed With

15 Appeals Of Patent Litigation filed by Alan D.

16 Halperin on behalf of Automotive Technologies

17 International, Inc.

18

19 MOTION to Approve Motion For Order Under 11

20 U.S.C. Section 363(b) And Fed. R. Bankr. P.

21 6004 Approving Debtors' Human Capital Hourly

22 Attrition Programs filed by John Wm. Butler

23 Jr. on behalf of Delphi Corporation.

24

25 APPLICATION for FRBP 2004 Examination - Motion

1 DELPHI CORPORATION

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2 of the Official Committee of Unsecured

3 Creditors for an Order Compelling the

4 Production of Documents by General Motors
5 Corporation Pursuant to Rule 2004 of the
6 Federal Rules of Bankruptcy Procedure filed by
7 Robert J. Rosenberg on behalf of The Official
8 Committee Of Unsecured Creditors.

9

10 MOTION to Approve Motion For Approval Of Joint
11 Interest Agreement Between Debtors And
12 Official Committee Of Unsecured Creditors,
13 Implementation Of Protective Order, And
14 Approval Of Procedures To Protect Information
15 In Fee Statements filed by John Wm. Butler Jr.
16 on behalf of Delphi Corporation.

17

18 RESPONSE /Reply In Support Of Motion For Order
19 Under 11 U.S.C. Section 362(D)(2) Directing
20 Debtor Delphi Automotive Systems, LLC To
21 Determine Within 150 Days Whether To Assume Or
22 Reject Its Nonresidential Real Property Lease
23 With Cherokee North Kansas City, LLC Filed By
24 Jill Mazer-Marino On Behalf Of Cherokee North
25 Kansas City, LLC.

1 DELPHI CORPORATION

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3 OBJECTION to Motion Debtors' Objection To
4 Motion For Order Under 11 U.S.C. Section

5 365(d)(2) Directing Debtor Delphi Automotive
6 Systems, LLC To Determine Within 150 Days
7 Whether To Assume Or Reject Its Nonresidential
8 Real Property Lease With Cherokee North Kansas
9 City, LLC (related document(s)[1834]) filed by
10 John Wm. Butler Jr. on behalf of Delphi
11 Corporation.

12

13 OBJECTION to Motion Appaloosa Management
14 L.P.'s Preliminary Objection to Motion for
15 Order Under 11 U.S.C. Section 363(b) and Fed.
16 R. Bankr. P. 6004 Approving the Debtors' Human
17 Capital Hourly Attrition Programs (related
18 document(s)[2933]) filed by Frank L. Eaton on
19 behalf of Appaloosa Management L.P.

20

21 STATEMENT Joinder of Appaloosa Management L.P.
22 in the Motion of the Official Committee of
23 Unsecured Creditors for an Order Compelling
24 the Production of Documents by General Motors
25 Corporation Pursuant to Rule 2004 of the

1 DELPHI CORPORATION 6
2 Federal Rules of Bankruptcy Procedure (related
3 document(s)[2961]) filed by Frank L. Eaton on
4 behalf of Appaloosa Management L.P..

5

6 RESPONSE / Limited Response of General Motors
7 Corporation to Debtors' Motion for Approval of
8 Joint Interest Agreement between Debtors and
9 Official Committee of Unsecured Creditors,
10 Implementation of Protective Order and
11 Approval of Procedures to Protect Information
12 in Fee Statements (related document(s)[3000])
13 filed by Michael P. Kessler on behalf of
14 General Motors Corporation.

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24 Transcribed By: Esther Accardi

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1 DELPHI CORPORATION 14

2 P R O C E E D I N G S

3 THE COURT: Please be seated.

4 Okay. We're back on the record in

5 Delphi.

6 MR. BUTLER: Your Honor, good

7 afternoon. Jack Butler, again, for the

8 debtors. The only remaining item on the

9 omnibus agenda for April is Item No. 13.

10 This is the debtors, Human Capital Hourly

11 Attrition Programs motion, filed at

12 docket no. 2933. Essentially, Your

13 Honor, there are three objectors to the

14 motion and two parties that have filed
15 statements in support. That is the UAW
16 has filed a statement in support at
17 docket no. 2958, and General Motors has
18 filed a statement in support as well in
19 connection with the motion. The three
20 objectors are Appaloosa, who has filed a
21 preliminary objection at docket no. 3021
22 and another objection at docket no. 3098.
23 The creditors' committee, which filed a
24 docket -- a more limited objection, and
25 is styled a limited objection at docket

1 DELPHI CORPORATION 15
2 no. 3092, and they amended that at docket
3 no. 3108. And Wilmington Trust on behalf
4 -- as indentured trustee, also filed what
5 they styled a limited objection at docket
6 no. 3097. In addition, Your Honor, I'm
7 advised, although, I haven't seen it,
8 that Law Debenture Trust Company filed a
9 limited objection as well, which was
10 docketed at 3130. But the Law Debenture
11 objection is essentially a joinder in the
12 objection to the creditors' committee,
13 and we'll need to trust, and we don't
14 believe -- I'm advised, at least, that if

15 it doesn't raise new objections to the
16 relief sought in the motion. So you have
17 General Motors at docket no. 3090, the
18 UAW at docket no. 2958 in support and the
19 others as I've described in opposition.

20 THE COURT: All right.

21 MR. BUTLER: Your Honor, in light
22 of the Court's comments from the bench
23 just before the lunch recess, of a desire
24 to conclude this hearing by 5 o'clock,
25 we've spent some time over the lunch hour

1 DELPHI CORPORATION 16
2 talking with several of the objectors to
3 understand how we would proceed here and
4 I'm going to attempt to outline, and I'm
5 sure I'll be corrected if I get it wrong,
6 but I'm going to attempt to outline an
7 approach to this afternoon's hearing.
8 First, Your Honor, there are exhibit
9 books that I believe have been provided
10 to the Court, previously. And, if not,
11 we have another set right here.

12 THE COURT: You should hand those
13 up.

14 MR. BUTLER: Thank you, Your Honor.
15 As is the custom, they are a joint

16 exhibit book. They are numbered exhibits
17 1 through 31. And those that are
18 protected under the protective order are,
19 you know, retain their numerical docket
20 number -- I mean their exhibit number,
21 but are in a separate binder. In
22 addition, Your Honor, I have two other
23 exhibits, exhibits which we marked
24 Exhibits 32 and 33. Exhibit 32 is the
25 deposition of Kevin Butler and Exhibit 33

1 DELPHI CORPORATION 17
2 is the deposition of John Sheehan. And
3 they have contained designations from
4 Appaloosa and the creditors' committee.
5 And Mr. Sheehan's deposition also
6 contains a designation, which I have
7 penciled in from this morning, by
8 Wilmington Trust at pages 133 through a
9 portion of 136, which are noted in black
10 ink on the exhibit. And, Your Honor, we
11 also submit with this the debtor's
12 fairness designations as well. So
13 Appaloosa's are marked in yellow, the
14 committees's in pink or rose, the
15 debtors's Fairness in blue, and the
16 Wilmington Trust in black. I'd like to,

17 if I could, present Exhibits 32 and 33 to
18 the Court.

19 THE COURT: Okay. Thank you.

20 MR. BUTLER: Your Honor, I'm
21 advised that no parties have any
22 objections to Exhibit's 1 through 33 and
23 that they should be admitted into
24 evidence.

25 THE COURT: All right. Everyone

1 DELPHI CORPORATION 18

2 nodding, I'll admit them into evidence.

3 (Exhibit's 1 through 33 hereby
4 received into evidence)

5 MR. BUTLER: Your Honor, I am also,
6 going to waive opening argument on behalf
7 of the debtors, taking Your Honor's
8 suggestion that we try to expedite this
9 summary proceeding during the course of
10 the afternoon. And, we'll try to address
11 things enclosed. Before I talk about --
12 go into the order of evidence, I would
13 ask, I suppose, with Your Honor's
14 permission if anyone else chooses to make
15 an opening.

16 THE COURT: Okay.

17 MR. KURTZ: Glenn Kurtz, White &

18 Case, on behalf of Appaloosa, Your Honor.

19 We'll save our remarks for closing.

20 THE COURT: Okay.

21 UNIDENTIFIED ATTORNEY: Your Honor,
22 UAW will do so, as well.

23 MR. SEIDER: The committee will, as
24 well.

25 MR. PETERSON: Your Honor, steel

1 DELPHI CORPORATION 19

2 workers, as well.

3 THE COURT: Okay.

4 MR. BUTLER: Your Honor, that being
5 the case, then we have only, I believe,
6 two witnesses that are subject to -- the
7 only party presenting witnesses today,
8 are the debtors, in that we're presenting
9 Mr. Butler and Mr. Sheehan. I'm advised
10 that Wilmington Trust may choose to call
11 them as part of its direct case, as well.
12 But other than that, my understanding is
13 as follows. That based on the
14 designations that have been presented to
15 Your Honor, and our discussions that
16 already meet and confers that you had the
17 opportunity to designate but not do
18 cross-exam, do both. And while no one is

19 admitting that was an agreement, I'm
20 still advised that based on the
21 designations that have been submitted
22 into Exhibit's 32 and 33, that neither
23 the committee nor Appaloosa intend to
24 cross-examine either of the witnesses.
25 Is that correct, gentlemen.

1 DELPHI CORPORATION 20

2 MR. KURTZ: Glenn Kurtz. That is
3 correct, subject to the witness actually
4 taking the stand on someone else's behalf
5 and making comments that we think it
6 would be appropriate to cross on.

7 THE COURT: Okay.

8 MR. BUTLER: So, I think the only
9 person who is choosing to object -- who
10 is choosing the cross-examine or take
11 direct testimony is Mr. Fox on behalf of
12 Wilmington Trust.

13 THE COURT: Okay.

14 MR. BUTLER: With that in mind,
15 Your Honor, I'd first like then to
16 present Kevin M. Butler and his
17 declaration as marked as Exhibit and
18 admitted into evidence as Exhibit 17, and
19 ask Mr. Butler to take the stand and be

20 available for cross-examination.

21 THE COURT: Okay.

22 (The Witness Is Sworn)

23 THE COURT: Okay. Mr. Fox.

24 CROSS EXAMINATION BY

25 MR. FOX:

1 DELPHI CORPORATION 21

2 Q. Good afternoon, Mr. Butler. My
3 name is Edward Fox. I'm from Kirkpatrick &
4 Lockhart Nicholson Graham. I represent
5 Wilmington Trust Companies, Indentured
6 Trustee.

7 A. Good afternoon.

8 Q. Mr. Butler, in your declaration you
9 referred to Delphi's employees. And the
10 define term Delphi, means Delphi Corporation.
11 Correct?

12 A. That's true.

13 Q. Okay. Does the defined term
14 Delphi, in your declaration, include any of
15 the debtor's subsidiaries which are debtors in
16 this case, or is it just limited to Delphi
17 Corporation?

18 A. It's my understanding that it
19 included the debtors, as well.

20 Q. It included all the debtors?

21 A. All the debtors.

22 Q. Could you take a look at your
23 declaration, if you would, on page 2? You
24 have that in front of you? Exhibit 17.

25 A. I'm sorry, page?

1 DELPHI CORPORATION 22

2 Q. If you look at page 2, paragraph 1?

3 A. Yes.

4 Q. Could you just read that first
5 sentence for me, if you would?

6 A. "Delphi Corporation, Delphi, and
7 certain of its subsidiaries and affiliates are
8 debtors and debtors-in-possession in these
9 Chapter 11 cases, collectively the debtors."

10 Q. So, when you refer in your
11 declaration to Delphi -- let me ask that
12 question again. Are you limiting yourself to
13 Delphi Corporation or did you mean all of the
14 debtors in these consolidated Chapter 11
15 cases?

16 A. It's my understanding that the
17 language -- and my understanding is that it's
18 collectively the debtors, all debtors subject
19 to the proceedings.

20 Q. And, that the term Delphi, means
21 all debtors, as well?

22 A. That's my understanding.

23 Q. Okay. In the attrition agreement,
24 I believe its paragraph 7(b) -- you're
25 familiar with the attrition agreement?

1 DELPHI CORPORATION 23

2 A. I am.

3 Q. You were involved in negotiating
4 that agreement?

5 A. I was.

6 Q. In, I believe its paragraph 7(b),
7 refers to the fact that General Motors may
8 assert a claim against the estate of Delphi
9 Corporation, do you recall that?

10 A. I believe so.

11 Q. Okay. Now is it your understanding
12 that when the term Delphi Corporation is used
13 in paragraph 7(b) in the attrition agreement,
14 that it's referring to all of the debtors or
15 just to the specific legal entity Delphi
16 Corporation?

17 A. It's my understanding, and I would
18 subject to the technicalities, it's the
19 debtors.

20 Q. All of the debtors?

21 A. It's my understanding.

22 Q. Okay. Do you know whether the

23 debtor has a different understanding about
24 that?

25 A. I would have to rely on expert

1 DELPHI CORPORATION 24

2 counsel on that.

3 Q. Well, were you involved in
4 negotiating the terms of that paragraph 7 of
5 the attrition agreement?

6 MR. BIENENSTOCK: Objection to this
7 line of questioning, Your Honor. Unless
8 there's an ambiguity in the agreement,
9 there's no basis for going into one of
10 the negotiators intent, and the agreement
11 is very clear. It says Delphi
12 Corporation.

13 MR. FOX: Your Honor, at this point
14 there is no agreement because it hasn't
15 been approved by the Court yet. So the
16 parole evidence will --

17 THE COURT: Well, I mean -- the
18 proposed agreement speaks for itself,
19 doesn't it? I mean, he --

20 MR. FOX: Well, I thought Mr.
21 Butler's declaration spoke for itself and
22 I quickly found out that wasn't the case
23 either.

24 THE COURT: Well, it was his
25 declaration, it's not his agreement. Why

1 DELPHI CORPORATION 25
2 don't we talk to the people who actually
3 -- well first of all, we could read it.
4 But, I guess its GM, ultimately, that
5 would be asserting the claim. What is
6 GM's position on this? It's what Mr.
7 Bienenstock said, right, that it's just
8 Delphi Corporation?

9 MR. FOX: Well, I don't know what
10 Delphi's position is on that point. And,
11 it's important given the structure of
12 this case.

13 THE COURT: Well --

14 MR. BUTLER: Your Honor, I didn't
15 know that was an issue but I'm sure that
16 all of -- certainly GM and debtors can
17 stipulate that this claim that is
18 provided in paragraph 7 is a claim
19 against the Estate of Delphi Corporation,
20 the parent company.

21 THE COURT: And no other debtor?

22 MR BUTLER: And no other debtors.

23 THE COURT: Okay. All right.

24 BY MR. FOX:

25 Q. Mr. Butler, to your knowledge, is

1 DELPHI CORPORATION 26

2 there any reason why paragraph 7 limited the
3 claim from GM to Delphi Corporation as opposed
4 to the debtors, collectively?

5 A. Not that I'm aware of.

6 Q. Okay. Do you know if that was done
7 at the instance of the debtors or of General
8 Motors?

9 MR. BIENENSTOCK: Objection.

10 Irrelevant to whether this should be a
11 proof.

12 THE COURT: I'll overrule that
13 objection. You can answer that.

14 THE WITNESS: My understanding is
15 that what we were attempting to do was
16 craft an agreement that would balance
17 right factors and benefit the estate and
18 yet not buy us any situations on claims
19 brought, like my understanding.

20 BY MR. FOX:

21 Q. Okay. And that's your
22 understanding as to why it specifically refers
23 to Delphi Corporation in 7(b)?

24 A. That would be my understanding.

25 Q. Okay. I'm going to get the UAW's

1 DELPHI CORPORATION 27

2 name wrong, because it's long. You probably
3 know it, I don't. I'm going to refer to them
4 as the UAW or the United Auto Workers. Do you
5 know who I'm referring to?

6 A. I do.

7 Q. And, they're the union that's the
8 party to the attrition agreement?

9 A. Yes.

10 Q. Okay. Does either Delphi
11 Corporation or the debtors, collectively, have
12 a Collective Bargaining Agreement with the
13 UAW?

14 A. It does.

15 Q. Do you know which entity -- which
16 debtor entity or entities or parties to that
17 Collective Bargaining Agreement?

18 A. I believe its Delphi Corporation.

19 Q. The single entity Delphi
20 Corporation.

21 A. It's my understanding.

22 Q. Okay. Now, do you know by whom --
23 by which debtor entity or entities, the UAW
24 members are employed, by Delphi or its
25 subsidiaries?

1 DELPHI CORPORATION 28

2 A. I believe they are employees of
3 Delphi Corporation.

4 Q. So, is that the case even if --
5 well let me lay a foundation. Do some of
6 these employees perform services for any of
7 the subsidiaries of Delphi Corporation who are
8 debtors in this case?

9 A. They may.

10 Q. Do you know for sure?

11 A. As I sit here, I don't think I
12 could stipulate as to that.

13 Q. What's your understanding?

14 A. That, we have subsidiaries in
15 different legal entities in the company and
16 that we also have a corporate structure. And
17 the actual employment relationship through
18 that, as I sit here, I wouldn't be able to
19 stipulate.

20 Q. Why don't you take a look, if you
21 would, at Exhibit 16 for a moment? There are
22 two structure charts, if you look at the one
23 with the green and red boxes?

24 A. Mine is in grey tones.

25 Q. Yeah, page 32.

1 DELPHI CORPORATION 29

2 A. Okay.

3 Q. This is the organizational
4 structure of the debtor and non-debtor
5 entities -- I have it in color if it would
6 make it easier for you to take a look. But,
7 looking at this organizational chart, does
8 that help you or know or answer the question
9 as to which of the debtor entities, the UAW
10 members perform services for?

11 A. No, it does not.

12 Q. To the extent that UAW members
13 perform services for debtor subsidiaries, as
14 opposed to Delphi Corporation, do you know how
15 they're paid or by whom?

16 A. I believe that we have different --
17 well, when you say how they're paid or whom,
18 can you clarify?

19 Q. By whom?

20 A. You mean through what payroll
21 system?

22 Q. By what entity they're paid?

23 A. I believe we have some employment
24 structures and we have a payroll system that
25 actually processes a check. And when I say,

1 DELPHI CORPORATION 30

2 employment structures, other legal entities
3 for employees, I believe, outside the state of
4 Michigan.

5 Q. Do you know what the name of the
6 legal entity is then, that's paying the
7 employees?

8 A. As I sit here, no, I don't.

9 Q. Is it Delphi Corporation?

10 A. I'm uncertain.

11 Q. To the extent that employees are
12 paid by this legal entity that you referred
13 to, are intercompany claims then asserted by
14 that entity against the specific legal
15 entities for whom the UAW employees are
16 providing services?

17 A. I'm sorry; could you repeat the
18 question again?

19 Q. To the extent that this legal
20 entity referred to, is making payments to UAW
21 members for services performed for various
22 debtor entities, is there then a system of
23 intercompany liabilities created to charge
24 those payroll costs for these UAW employees to
25 the legal entities for whom they are

1 DELPHI CORPORATION 31

2 performing services?

3 A. I don't know.

4 Q. Do you know who would know that?

5 A. It may be someone in our finance
6 organization.

7 Q. Do you think Mr. Sheehan would know
8 that?

9 A. I don't know.

10 Q. Okay. The subsidiary entities, as
11 I understand it, are not parties to the
12 Collective Bargaining Agreement with the UAW,
13 is the correct?

14 A. I believe its Delphi Corporation.

15 Q. Okay. Are the subsidiary entities
16 free to go out and hire -- well, let me ask it
17 this way. Are the subsidiary entities bound
18 by the terms of the Collective Bargaining
19 Agreement between Delphi and the UAW?

20 A. I believe that all our management
21 structure that associates under the Collective
22 Bargaining Agreement is bound.

23 Q. I'm not sure I understand your
24 answer?

25 A. I'm --

3 given.

4 THE COURT: Well, you could

5 certainly ask him the question.

6 BY MR. FOX:

7 Q. What did you mean by your
8 management structure being bound?

9 A. I mean, the management of Delphi
10 Corporation and the way we diffuse our
11 responsibilities and interact with the unions
12 are bound. As you ask me a question about
13 legal entities -- not being aware, I'm not
14 sure exactly what that means.

15 Q. But, when you said the management
16 structure, you talking about individual
17 managers or are you talking about entities?

18 A. I'm talking about Delphi
19 Corporation and the management that carries
20 out acts, or performs under the contract with
21 the union.

22 Q. Well, is it your understanding --
23 do you know, or do you have a view as to
24 whether Delphi Automotive Systems, LLC is
25 bound by the provision of the Collective

4 MR. BIENENSTOCK: Objection.

5 That's a legal conclusion, legal
6 conclusion. The contract speak for
7 themselves.

8 MR. FOX: We could put the contract
9 into evidence.

10 MR. BIENENSTOCK: Well, I --

11 THE COURT: He's already testified
12 that he doesn't know, except for Delphi,
13 as an entity bound by the Collective
14 Bargaining Agreement.

15 MR. FOX: Then, that's all I'm
16 going to have for this witness, Your
17 Honor.

18 THE COURT: Okay. Any re-direct?

19 MR. BIENENSTOCK: I have no re-
20 direct, Your Honor.

21 THE COURT: You can step down, sir.

22 THE WITNESS: Thank you, Your
23 Honor.

24 MR. BUTLER: Your Honor, I'd like
25 to present now, Mr. John Sheehan, the

1 DELPHI CORPORATION 34
2 company's corporate restructuring
3 officer, in connection with cross-
4 examination with respect to his

5 declaration which has been admitted into
6 evidence as Exhibit Number 18.

7 THE COURT: Okay.

8 MR. BUTLER: Mr. Sheehan.

9 (The Witness Is Sworn)

10 CROSS-EXAMINATION BY

11 MR. FOX:

12 Q. Good afternoon, Mr. Sheehan. My
13 name is Edward Fox on behalf of Wilmington
14 Trust Co. Mr. Sheehan, do you know whether --
15 you just heard Mr. Butler's testimony, is that
16 correct?

17 A. I did, sir.

18 Q. Okay. I'm going to again, refer to
19 the union members -- members of the UAW and
20 the United Auto Workers if that's okay with
21 you?

22 A. Yes, sir.

23 Q. Okay. Do you know whether -- are
24 you familiar with the corporate structure of
25 Delphi Corporation and its debtor

1 DELPHI CORPORATION 35
2 subsidiaries?

3 A. Generally, yes.

4 Q. Okay. And, can you tell me whether
5 there are UAW members that perform services

6 for debtor subsidiaries in Delphi Corporation?

7 A. It would be my understanding that
8 the significant portion of our U.S. operations
9 are conducted within the legal entity, Delphi
10 Automotive Systems LLC.

11 Q. And, do the UAW members perform
12 services for Delphi Automotive Systems LLC?

13 A. The UAW members perform services
14 for the operation in which they're operating.
15 So, they are performing services in a
16 particular manufacturing facility. That
17 manufacturing facility is owned by, in most
18 instances, Delphi Automotive Systems LLC.

19 Q. Does that mean that there on
20 facilities owned by Delphi Automotive Systems
21 LLC in which UAW members perform services?

22 A. Can you ask your question again,
23 please?

24 Q. Does your previous answer mean that
25 there are plants owned by Delphi Automotive

1 DELPHI CORPORATION 36
2 Systems LLC, in which UAW members perform
3 services?

4 A. Yes, sir.

5 Q. Okay. And, Delphi Automotive
6 Systems LLC is a subsidiary of Delphi

7 Corporation?

8 A. That is my understanding.

9 Q. Okay. Now, to the extent that
10 those UAW members perform services for Delphi
11 Automotive Systems LLC, do you know who
12 they're -- are they technically, in your view,
13 employed by Delphi Automotive Systems LLC?

14 A. It is my understanding that a
15 significant portion of the UAW employees that
16 are -- that we have in the United States are
17 employed by a subsidiary other than Delphi
18 Automotive Systems LLC.

19 Q. Do you know which subsidiaries that
20 might be?

21 A. I would want to consult with
22 Exhibit -- see Exhibit 16 before answering
23 that.

24 Q. Feel free to take a look, if that
25 will help you answer the question.

1 DELPHI CORPORATION 37

2 A. I believe that for a significant
3 number of employees that they are employees of
4 Delphi Automotive Systems Human Resources LLC.

5 Q. Now, to the extent -- how are the
6 UAW employees paid by -- or let me ask it this
7 way. By whom, are the UAW employees paid that

8 work for, I guess, Delphi Automotive Systems
9 Human Resources LLC?

10 A. Delphi operates a cash pooling
11 system with respect to its U.S. Operations.
12 That cash pooling system is run by Delphi
13 Automotive Systems LLC. Therefore, the
14 payroll expenditures or payments, the checks,
15 I believe, are issued out of Delphi Automotive
16 Systems LLC.

17 Q. Now, is there a system of
18 intercompany accounts that allocates among the
19 subsidiaries that receive the services of the
20 UAW members to charge those entities for the
21 cost of paying them for their services?

22 A. I'm not aware.

23 Q. What's your position with the
24 debtor, sir?

25 A. I'm the vice president, chief

1 DELPHI CORPORATION 38

2 restructuring officer, chief accounting
3 officer and comptroller.

4 Q. And, you were for a time, also the
5 chief financial officer?

6 A. I was the acting chief financial
7 officer, that's correct?

8 Q. Okay. But you don't know whether

9 there's a systems of inter -- does the company
10 generally -- does the debtor generally have a
11 system of intercompany accounts to deal with
12 cash that comes in through various entities?

13 A. The company does have intercompany
14 accounts, yet it does.

15 Q. Does the company maintain books and
16 records to keep track of the cash flow between
17 various debtor entities?

18 A. The U.S. operations are highly
19 integrated, and as a result, the individual --
20 the individual legal entities in the United
21 States, we are not charging back and forth
22 cash transactions among those entities.

23 Q. Do you keep track at all, among
24 these legal entities?

25 A. We do, generally, keep track among

1 DELPHI CORPORATION 39

2 the legal entities, yes.

3 Q. But, you're not keeping track of
4 the payments to the employees?

5 A. As I sit here today, at the top of
6 my head, I do not know.

7 Q. As the chief accounting officer of
8 the company, you don't know?

9 A. That's correct, sir.

10 Q. Okay. To your knowledge, can a
11 debtor subsidiary such as Delphi Automotive
12 Systems LLC, if it needs to, just go out and
13 hire an employee. Or do they have to use a
14 union employee, for the types of services
15 covered by the Collective Bargaining
16 Agreement?

17 A. I'm sorry. Can you ask that
18 question again, please? I'm sorry.

19 Q. As an example, Delphi Automotive
20 Systems LLC needed to hire an hourly employee
21 to perform the types of services that the UAW
22 members typically perform, could Delphi
23 Automotive Systems, to your knowledge, go out
24 and just hire somebody or do they have to hire
25 somebody who's in the union?

1 DELPHI CORPORATION 40

2 MS. CECCOTTI: I'm going to object
3 at a minimum to the form, and also to
4 relevance.

5 THE COURT: Do you have any
6 response?

7 MR. FOX: I'll withdraw it.

8 THE COURT: Okay.

9 THE WITNESS: Thank you.

10 BY MR. FOX:

11 Q. You're aware, Mr. Sheehan, that
12 pursuant to the terms of the attrition
13 agreement, that General Motors at a minimum
14 may assert certain claims against Delphi
15 Corporation. Do you understand that to be the
16 case?

17 A. I understand that to be the case,
18 that they may assert claims.

19 Q. Okay. Now, to the extent that
20 General Motors asserts claims against Delphi
21 Corporation, pursuant to the terms of Section
22 7(b) of the attrition agreement, do you know
23 whether Delphi Corporation, at that point,
24 would have sought to assert claims against
25 debtor subsidiary entities to recover all or a

1 DELPHI CORPORATION 41
2 portion of what Delphi Corporation has to pay
3 to General Motors in respect of its claim?

4 A. As I sit here today, I don't know.

5 MR. FOX: That's all I have, Your
6 Honor, thank you.

7 THE COURT: Okay. Any re-direct?

8 MR. BUTLER: No re-direct, Your
9 Honor.

10 THE COURT: Okay. You can step
11 down.

12 MR. BUTLER: Your Honor, in terms
13 of the evidentiary record, the debtors
14 will rest on Exhibit's 1 through 33,
15 including the declarations of Mr. Sheehan
16 and Mr. Butler as they have been admitted
17 into evidence.

18 THE COURT: Okay. All right.

19 MR. BUTLER: Anyone else have
20 anything they want to put in the record?

21 MR. SEIDER: Your Honor, the
22 committee is satisfied with Exhibit's 1
23 through 33.

24 MR. FOX: Nothing to add.

25 THE COURT: Okay.

1 DELPHI CORPORATION 42

2 MR. BUTLER: Your Honor, I move to
3 close the evidentiary record.

4 THE COURT: All right. It's
5 closed.

6 MR. BUTLER: Your Honor, we have
7 addressed the Human Capital motion in
8 detail in our pleadings. With Your
9 Honor's permission, I'd like to defer my
10 argument until I've heard the objections
11 presented by the two objectors. In my
12 light of the Court's schedule this

13 afternoon I don't know it's a useful of
14 the Court's time to walk through the
15 Human Capital motion in great detail.
16 I'm happy to do it if the Court would
17 like me to, but I think it might be
18 useful to sum up after --

19 THE COURT: All right. I'm looking
20 through my notes if it makes sense for me
21 to hear people too, or request some
22 questions first, but I'll hear the
23 objectors first.

24 MR. BUTLER: Thank you, Your Honor.

25 MR. SEIDER: Good afternoon, Your

1 DELPHI CORPORATION 43

2 Honor. Mitchell Seider of Latham &
3 Watkins on behalf of the creditor'
4 committee. Your Honor, before getting to
5 the fisher, if you will, between the
6 committee and the debtors on the debtor's
7 motion, I would like to go over what we
8 think is some common ground. The
9 committee is in general, supportive of
10 the debtor trying to reach an
11 accommodation with its hourly work force
12 in order to provide the hourly workers
13 with a soft landing as the debtor seems

14 to transform itself and shrink the size
15 of its U.S. labor force, particularly its
16 hourly force. Additionally, Your Honor,
17 the committee doesn't quibble with GM's
18 interest in reserving rights to assert
19 claims after the implementation of the
20 program. However, Your Honor, the
21 committee is quite concerned that the
22 consideration that's being provided to GM
23 in this particular program is neither
24 appropriate nor allowable. Your Honor,
25 if the motion is granted the total claims

1 DELPHI CORPORATION 44
2 of GM arising from the program back
3 against the debtors would be in excess of
4 3 million dollars. This was Mr.
5 Sheehan's testimony in his deposition two
6 days ago, that's Exhibit 33, Your Honor,
7 page 47, lines 4 through 23. Mr.
8 Sheehan, Your Honor, of course is the
9 debtor's chief restructuring officer.
10 Mr. Kevin Butler addressed the same issue
11 in his deposition on Wednesday, as well.
12 Mr. Butler is of course, the director's
13 vice president for labor relations. He
14 came to the same conclusion as Mr.

15 Sheehan, essentially, at Exhibit 32, page
16 92, lines 24 through page 93, line 21.
17 Under the program, Your Honor, GM is
18 authorized to assert this 3 billion
19 dollars in claims under the U.S. Employee
20 Matters Agreement, which is Debtor's
21 Exhibit 3. GM's right to do so is
22 acknowledged by the debtors in paragraph
23 25 of their omnibus reply, which was
24 filed yesterday afternoon. For purposes
25 of the program, Your Honor, and the

1 DELPHI CORPORATION 45
2 debtor's motion, the U.S. Employee
3 Matters Agreement includes certain other
4 agreements that the debtors have admitted
5 into evidence as Exhibits 4 and 5. In
6 his deposition on Wednesday, Your Honor,
7 Mr. Butler, the debtor's vice president
8 for labor relations, indicated that GM,
9 will have under the programs -- what GM
10 would get under the programs and what the
11 U.S. Employees Matters Agreement actually
12 provides. This was discussed in some
13 detail by the committee in its amended
14 objection. I'm not going to go into it
15 in great detail right now unless that

16 would be useful; unless it would useful
17 for Your Honor. However, I would like to
18 point out, Your Honor, that Mr. Butler's
19 testimony on Wednesday, did confirm
20 several of the assertions we made in our
21 amended objection. First, Your Honor,
22 Mr. Butler acknowledged that the
23 provision in Section 4 of the attrition
24 program, allowing GM to consider those
25 Delphi employees who checked the box to

1 DELPHI CORPORATION 46
2 be flow back employees under the Employee
3 Matters Agreement, that this provides GM
4 with rights that it would be allowed, by
5 virtue of the program, to assert in these
6 bankruptcy cases that are not found in
7 the Employee Matters Agreement. That was
8 page 29 of Mr. Butler's deposition. Your
9 Honor, that's Exhibit 32. The debtor's
10 have essentially admitted this is well,
11 to be the case on the face, Your Honor,
12 that the Employees Matters Agreement
13 would not allow for GM to assert claims
14 based upon the, check-the-box portion of
15 the program. I think in paragraphs 2 and
16 8 of GM's reply that was filed yesterday,

17 GM did not dispute this either. Simply
18 put, Your Honor, in our view, the program
19 is a rewriting of the Employees Matters
20 Agreement. The impact of allowing GM to
21 have the benefit of a rewriting of this
22 agreement for the check-the-box employees
23 is very significant for the committee in
24 this case. I think as Mr. Butler
25 testified on Wednesday, page 105, line 7

1 DELPHI CORPORATION 47
2 through 16, he thinks the liability of a
3 100 percent acceptance from the check-
4 the-box program would be for GM to have a
5 claim for approximately 2.8 billion
6 dollars. Beyond that, in categories of
7 claims, Your Honor, to the Employee
8 Matters Agreement, the program would also
9 extend what is a key termination date in
10 the Employee Matters agreement. As
11 Exhibit's 3, 4 and 5 demonstrate, your
12 Honor, the Employee Matters Agreement,
13 after December 31st, 2006, cuts off the
14 time in which GM can charge Delphi for
15 employees who flow back to GM after that
16 date. So that is a termination date that
17 is in those agreements. Under the

18 program, however, Your honor, GM will be
19 able to charge Delphi, under the Employee
20 Matters Agreement, for employees who flow
21 back after December 31st, 2006 and at
22 least through September 2007 and possibly
23 beyond. That rewriting of the deadline
24 is also significant. As Mr. Butler
25 testified, at page 128 of his deposition,

1 DELPHI CORPORATION 48
2 lines 9 through 20, the approximate
3 estimated cost per employee for the OPEB
4 is approximately \$200,000. What this
5 means, Your Honor, is that GM's
6 consideration for the program, if the
7 program remains as is, will be that GM
8 gets to assert claims under the Employee
9 Matters Agreement, that the debtors
10 expect will be in the vicinity of 3
11 billion dollars. Now put this --

12 THE COURT: Can I -- I'm sorry. As
13 far as the last two matters, I'm still
14 grappling with what the cost is of the
15 change as opposed to the overall costs of
16 the flow back. Is there anything in the
17 record, with respect to the cost to the
18 estates in the form of -- just even the

19 amount of a claim, for the nine month
20 extension?

21 MR. SEIDER: No, Your Honor. I
22 don't know that that's necessarily
23 knowable, because it depends on how many
24 employees flow back between December
25 31st, the deadline of the program, as it

1 DELPHI CORPORATION 49
2 existed to pre-petition 2006 and the
3 extended deadline that would be provided
4 for GM's benefit under the program.

5 THE COURT: Okay. So the parties
6 have not really dealt with that extra
7 nine month cost as an estimate?

8 MR. SEIDER: If I understand Your
9 Honor's question, I don't think that a
10 projected cost for that additional stub
11 period of time has been projected by the
12 company. If it has been, I don't think
13 that it's been shared with the committee.

14 THE COURT: Okay. And, with regard
15 to the first point you made, the impact
16 of a 100 percent acceptance on the check-
17 the-box flow back is estimated to be 2.8
18 billion?

19 MR. SEIDER: That was Mr. Butler's

20 testimony.

21 THE COURT: But, he testified that
22 it gives -- by conceding, or providing,
23 that GM can assert claims under the U.S.
24 Employee Matters Agreement, GM has rights
25 in excess of what they have now under

1 DELPHI CORPORATION 50
2 that agreement. I'm assuming, but
3 correct me if I'm wrong, that not all of
4 that 2.8 billion is in excess of what
5 they would have now. That some portion
6 of that they could charge under the
7 existing agreements?

8 MR. SEIDER: Your Honor, I don't
9 know the answer to whether they could use
10 the Employee Matters Agreement, absent
11 this program.

12 THE COURT: Well, even leaving
13 aside that agreement, other agreements?

14 MR. SEIDER: Other agreements, yes.
15 And that's a very important point, Your
16 Honor. Because those --

17 THE COURT: Well, I know there are
18 timing issues in terms of the valuation
19 of the claim. I'm really trying to get
20 to the quantification of the tradeoff

21 here. I understand that in return for
22 agreeing to what it agreed to, GM got
23 something new; I think agreed to by the
24 debtor. And, I understand generally from
25 your response, or your limited objection,

1 DELPHI CORPORATION 51
2 thematically what those new things are.
3 But I'm looking in the record for some
4 basis of quantifying what it was that GM
5 got; to see whether it balances out or is
6 less than what it gave.

7 MR. SEIDER: If I understand your
8 question, let me see if I can try and
9 answer it, Your Honor. If you start from
10 the proposition that it is uncertain and
11 perhaps even dubious, the Employee
12 Matters Agreement could be used, absent
13 this program, to assert claims on flow
14 back at this point in time. Making that
15 agreement applicable here, I think based
16 upon the testimony of Mr. Sheehan and Mr.
17 Butler, adds up to, potentially, a claim
18 of, in excess, of 3 billion dollars. I
19 don't think that a fine point can be put
20 on it yet, because nobody knows how many
21 employees are actually going to check-

22 the-box, for instance, in flow back.

23 THE COURT: But -- and you tell me,
24 if that provision were not in the
25 agreement that is up for approval today,

1 DELPHI CORPORATION 52

2 wouldn't there be other agreements that
3 GM and the debtors are a party to, that
4 GM could assert claims under?

5 MR. SEIDER: Yes, there are.

6 THE COURT: In return for taking
7 back their flow back employees.

8 MR. SEIDER: Yes, Your Honor. And,
9 in fact, I think that those agreements
10 that actually comprehend, in the scheme
11 of the relationship between Delphi and
12 GM, from the time of the spinoff this
13 type of development. And I'm afraid, of
14 course, to the Benefit Guaranty and the
15 Indemnity Contract approximately a year
16 later given by the debtors to GM.

17 THE COURT: So is the issue here,
18 and I'm not talking about now, the parent
19 versus the subs issue that Mr. Fox was
20 focusing a lot on during his cross. But
21 with regard to the U.S. Employee Matters
22 Agreement, is the issue here one

23 primarily of an improved ability of GM to
24 fix its claim as opposed to getting a
25 whole new claim, ie, if it's under the

1 DELPHI CORPORATION 53

2 old agreements there are indemnification
3 claims that may get fixed over time
4 versus under the U.S. Employee Matters
5 Agreement, you have claims that get
6 fixed. Once the actuaries are done and
7 the parties are finished arguing about
8 what the actuarial projections are?

9 MR. SEIDER: I think that's it,
10 Your Honor. And, at the risk of a bad
11 analogy, I think from the committee's
12 prospective there is a very distinct
13 difference in the taste that's in your
14 mouth depending on which plate it comes
15 from.

16 THE COURT: Well, I'm just trying
17 to figure out the cash impact of it,
18 though. I mean, it's about 2.8 billion
19 dollars, its present value of some
20 difference plus maybe legal arguments
21 about 502(e) and the like, right?

22 MR. SEIDER: I think it may be more
23 than a billion, Your Honor, but those

24 502(e) arguments are certainly very
25 valuable to the estate.

1 DELPHI CORPORATION 54

2 THE COURT: All right. But I'm
3 just trying to quantify the dollar
4 impact. It's not 2.8 billion, because
5 there are other agreements that they
6 could assert claims under. Or 3 billion
7 depending on, you know, the nine months
8 and --

9 MR. SEIDER: Your Honor, if you
10 start from the proposition that we need
11 to sort of know what the outside boundary
12 may be in the event that the program is
13 approved, then I think Mr. Butler and Mr.
14 Sheehan have told us, that its north of 3
15 billion dollars. What it actually will
16 be, of course, depends upon the rate of
17 which people flow back.

18 THE COURT: Right.

19 MR. SEIDER: Now if we say, well,
20 is that the same impact under these other
21 agreements, subject of course, to the
22 502(e) rights, I think the answer to that
23 is actually no. And the reason for that
24 is, the Employee Matters Agreement has

25 the effect of accelerating -- and putting

1 DELPHI CORPORATION 55
2 aside 502(e), has the impact of
3 accelerating OPEB liability as people
4 live out their lives following the
5 expiration of the current GM and Delphi
6 CBAs in 2007. It's our view, Your Honor,
7 that when GM and Delphi redo their CBAs,
8 regardless of whether its through an 1113
9 process, in Delphi's case, or through a
10 negotiation in GM's place prior to the
11 expiration, it's likely that the level of
12 OPEB provided in the new agreements, if
13 you will, Your Honor, is going to be less
14 than what's in the current plan. By
15 using the Employee Matters Agreement, GM
16 will be able to capture for itself all of
17 the value, if you will, on the OPEB fully
18 loaded under the current Collective
19 Bargaining Agreement. But as it makes
20 modifications under its own agreement and
21 as Delphi's obligations come down either
22 through a restructuring of its current
23 CBA or through its 1114 motion, GM will
24 be paying out to the beneficiaries at a
25 lower rate. And as a result, we believe,

1 DELPHI CORPORATION 56
2 will be capturing for itself the
3 differential between the higher number
4 under the Employee Matters Agreement and
5 the lower number that it would pay out
6 under the modified CBAs or the 1114 order
7 that Your Honor may enter. We think
8 that's an important distinction.

9 THE COURT: Okay. Besides the
10 502(e) point, are there other
11 distinctions?

12 MR. SEIDER: Between the Benefit
13 Guaranty Indemnity on the one hand and
14 the employer's agreement on the other?

15 THE COURT: Right.

16 MR. SEIDER: Yes. Mr. Rosenberg
17 has reminded me of an important point.
18 There are issues that surround, Your
19 Honor, the granting of the indemnity, or
20 the entry by the debtors into the
21 indemnity contract, approximately a year
22 after the spinoff. And the
23 enforceability of the indemnity based
24 upon the lapse of time and perhaps other
25 factors that the committee is looking

1 DELPHI CORPORATION 57

2 into now that I don't think we need to

3 get into at this point. But, that timing

4 sequence and these other factors could

5 have a very significant impact on the

6 vitality of that agreement as a basis for

7 claims over time. And, I do want to

8 point out, Your Honor, that whatever

9 infirmities there may be with the

10 indemnity, based upon the circumstances

11 of its being granted, that should not

12 really inform a decision today, that's in

13 the past and it's now to some extent, at

14 least, set in stone. And, it will be

15 developed and it will be looked into as

16 we progress further in the case. I think

17 the point here though, today, is that the

18 program will allow GM to use its Employee

19 Matters Agreement to shield itself, not

20 only from that investigation but from the

21 outcome of it as well as get the leg up

22 that Your Honor, I think, was indicating

23 a few moments ago in your questions.

24 THE COURT: So, it's the parties

25 view that that type of issue is not

1 DELPHI CORPORATION 58

2 preserved by the reservations of rights
3 about the right to object?

4 MR. SEIDER: I don't think it is,
5 Your Honor, because the way in which I
6 think the language works in 7(d), I think
7 it says that the claim that arises under
8 the Employee Matters Agreement becomes a
9 general pre-petition unsecured claim.
10 And --

11 THE COURT: You read the language
12 that the debtors put into their reply to
13 amend the proposed order, and it goes on
14 for several lines. But, I think you're
15 probably right, but I just want to make
16 sure. It says, "the avoidance of doubt,
17 nothing in the motion, the UAW Special
18 Attrition Program Agreement or any other
19 documents, shall prejudice the right of
20 any interested party, including the
21 debtors and the creditors' committee, to
22 challenge the allowability amount or
23 priority of any claims asserted by GM,
24 except that." Up to that point
25 everything is fine, that's what you want

1 DELPHI CORPORATION 59

2 period.

3 MR. SEIDER: Yes, Your Honor.

4 THE COURT: Then it says, "Except
5 that GM's claims, if any, with respect to
6 OPEB under paragraph 4 of the UAW Special
7 Attrition Program Agreement or Active
8 Healthcare and Life Insurance under
9 paragraph 7(d) of the agreement, shall
10 not be subject to objection on the basis
11 the claims were not assertible under the
12 U.S. Employee Matters Agreement." So, I
13 guess you're saying that, that confirms
14 that it's assertible under this agreement
15 and I guess the step that's not stated in
16 that proviso is that they're assertible
17 under that agreement as of today. So,
18 you can't look back at the circumstances
19 when the indemnification agreement was
20 entered into and assert whatever legal
21 theories you want to assert, to say that
22 they shouldn't have a claim back under
23 the indemnification agreement. Is that
24 the issue?

25 MR. SEIDER: That is a fair

1 DELPHI CORPORATION 60

2 statement, Your Honor. And, I think it's

3 --

4 THE COURT: I mean, that's implying
5 something that's not necessarily stated
6 in the order.

7 MR. SEIDER: Well, we think that
8 "except" is a powerful word, Your Honor,
9 and we think also, Your Honor, that it
10 goes beyond that as well. If you start
11 from the proposition that the Employee
12 Matters Agreement would not be
13 enforceable on a post-petition basis,
14 either because perhaps it gets rejected
15 as an executory contract, or because it's
16 a pre-petition agreement that's not
17 executory and it ends up being the
18 subject of some sort of claim objection.
19 GM would then be left in the ordinary
20 process with whatever rights it may have
21 under the Benefit Guaranty and the
22 indemnity. Our concern is that this
23 order will shield from that process the
24 claims under the Employee Matters
25 Agreement by taking away, if you will --

3 talked about, will take away from the
4 committee, Your Honor, an ability to have
5 that agreement set aside.

6 THE COURT: But if you reject it,
7 GM would still have a damages claim,
8 wouldn't they?

9 MR. SEIDER: Conceivably you do,
10 and then you get into the question of
11 allowability. Which I don't think is
12 necessarily here, but our concern is that
13 if we do this today, even if we do reject
14 it, we're going to be a leg down on the
15 allowability defense. May I continue,
16 Your Honor.

17 THE COURT: Yeah. I'm just trying
18 to think that through. Well, GM asserts
19 that these may be covered under the
20 employee agreement, right, already? Or
21 do they not?

22 MR. SEIDER: I don't know, Your
23 Honor.

24 THE COURT: Okay.

25 MR. SEIDER: I haven't seen an

1 DELPHI CORPORATION 62
2 assertion in that regard, they may have
3 made it. I may have missed it.

4 THE COURT: Okay. All right. Just
5 going on, for a moment. The point about
6 the acceleration, if you will, of the
7 claim, I understand the argument about
8 the fact that in the future GM may
9 succeed in revising those OPEB
10 liabilities as part of other negotiations
11 it will have with the union. And/or the
12 debtor will have negotiations with the
13 union about those liabilities. It seemed
14 to me you were making another argument
15 too, which was that by going through the
16 mathematical calculation that the U.S.
17 Employee Matters Agreement requires, that
18 the debtors were giving something on top
19 of that also to GM because it was a
20 mathematical calculation, as opposed to
21 being tied to actual experience. Is that
22 --

23 MR. SEIDER: That's right, Your
24 Honor. You know, in the ordinary course
25 we keep coming back to it, but 502(e)

1 DELPHI CORPORATION 63
2 says you get back what you pay out.
3 Under the Employee Matters Agreement,
4 that Your Honor now recognizes, there's

5 the opportunity to get more than you pay
6 out.

7 THE COURT: But because it is an
8 actuarial calculation, and people do seem
9 to keep living longer, is it just as
10 likely that there might be a benefit
11 there for Delphi?

12 MR. SEIDER: Well, Your Honor, I'm
13 not a --

14 THE COURT: Or maybe just a wash?
15 I don't know?

16 MR. SEIDER: I'm not an actuary and
17 the committee's proposed actuary has not
18 had an opportunity to scrub the
19 assumptions, the what's and why it uses
20 in making the actuarial calculation of
21 the claim for GM. So, yes I --

22 THE COURT: Is that conclusive? Is
23 there a mechanism under the Employee
24 Matters Agreement for dueling actuaries and
25 then a third actuary to come in or do you

1 DELPHI CORPORATION 64
2 just rely on GM's actuary?

3 MR. SEIDER: Well, Your Honor, I
4 think that's in essence where you end up
5 because GM's actuary and Delphi's actuary

6 are the same firm.

7 THE COURT: Well, that's a good
8 deal. Well, no, Appaloosa didn't like
9 them, but generally they're pretty --
10 actually they liked each other, the two
11 actuaries, quite respectful of each other
12 at the last hearing.

13 MR. SEIDER: Sort of like law
14 students marrying one another.

15 THE COURTROOM: All right. Okay.
16 So you can continue.

17 MR. SEIDER: Thank you, Your Honor.
18 We've talked about the Employee Matters
19 Agreement, there's another requirement
20 that's related to it that I'd like to
21 make -- it has to do with the Benefit
22 Guaranty. Your Honor, as you know, the
23 Benefit Guaranty expires in September of
24 2007. And, of course, the indemnity
25 obligation to the extent that it's

1 DELPHI CORPORATION 65
2 enforceable with one at that time as
3 well. I think when we talk about the
4 Employee Matters Agreement as the vehicle
5 for the claim, on the one hand, and the
6 Benefit Guaranty/indemnity as the vehicle

7 on the other, at bottom we're talking
8 about is who's going to bear the cost of
9 the employees flowing back to GM from
10 Delphi. Because if this comes in under
11 the Employee Matters Agreement, the great
12 likelihood is that it's going to be borne
13 by the estate or unsecured creditors. If
14 it goes to the Benefit Guaranty and it
15 goes to the indemnity, then at least
16 there's an open question as to who bears
17 it. And, we think at this juncture in
18 the case, Your Honor, it is certainly
19 premature to make that decision in a way
20 that we'll have repercussions for the
21 rest of the case. We're asking, in
22 essence, that the matter remain open
23 until such time there's been an
24 opportunity for parties to more develop
25 the facts and have a full say on this.

1 DELPHI CORPORATION 66
2 Mr. Butler was, I think, was very
3 forthcoming about this program coming
4 down the pike and trying to give us
5 information. But nevertheless, this is
6 something of significant magnitude that
7 we're here on with respect to the

8 pleadings that was done on 16 days
9 notice. We've done what we can to get up
10 to speed on it, but that is certainly one
11 of our observations that there is a
12 shifting here, if you will, by virtue of
13 this program of the risk on who's going
14 to bear the cost of the flow back.

15 THE COURT: And, again, that's
16 because it's contemplated that there will
17 be future negotiations on the flow back,
18 separate and apart from this.

19 MR. SEIDER: Yes, Your Honor, I
20 would expect that there will be. I have
21 not -- I don't think that we have
22 anything concrete, but I think the
23 expectation is that --

24 THE COURT: Not on the flow back,
25 I'm sorry, but on the underlying OPEB

1 DELPHI CORPORATION 67
2 liabilities?

3 MR. SEIDER: Well, they're
4 certainly related and I'll get to that in
5 a moment to the relationship between
6 today's program and the recently filed
7 motions with respect to the Collective
8 Bargaining Agreements and the employee

9 welfare obligations. Excuse me, retiree
10 welfare obligations. Your Honor, I'd
11 like to spend a moment, if I could,
12 talking about the (indiscernible),
13 because we just got the reply from the
14 debtors yesterday and just got the reply
15 from GM as well. And, I don't want to
16 spend a whole lot of time on this, but I
17 think there are a couple of points that
18 are important to make. As I understand
19 the debtor's position and I think it's
20 GM's position as well. Let me split the
21 two, actually. As I understand GM's
22 position, its put value on the table and
23 it's entitled to consideration in
24 exchange for that value and the details
25 are just going have to sort of cow tow,

1 DELPHI CORPORATION 68
2 if you will, to that fact that
3 consideration is owed, period. As I
4 understand the debtors position, Your
5 Honor, this rewriting, if you will, of a
6 pre-petition agreement can be justified
7 under 363(b) as an exercise of the
8 debtors business judgment. Respectfully,
9 Your Honor, we think that they're both

10 wrong. I'd like to tell you why.
11 There's nothing in 363(b), of course on
12 its face, that provides a right for a
13 party to go back in time and re-write its
14 pre-petition agreements. We found a
15 couple of cases that we think may be
16 useful to Your Honor, in this regard. On
17 is Farmor v. Strauss Building Associates,
18 it's at 204 Bankruptcy Reporter 948. In
19 that case, a debtor sought to amend the
20 partnership agreement with the requisite
21 consent -- a pre-petition partnership
22 agreement, with the requisite consent of
23 its limited partners under Section
24 363(b). The Bankruptcy Court denied the
25 motion and it relied on what it described

1 DELPHI CORPORATION 69
2 as 6th Circuit precedent. That
3 bankruptcy courts should not rewrite pre-
4 petition contracts to add provisions.
5 The district court then affirmed the
6 bankruptcy court. That is in essence
7 what we're doing here; we're rewriting
8 the Employee Matters Agreement, to add
9 new provisions to it, to accommodate the
10 check-the-box flow backs. Your Honor, I

11 think it's been said numerous times in
12 numerous bankruptcy courts, but however
13 expansive the bankruptcy court's power
14 may be, to protect the property interests
15 of the debtor-in-possession it does not
16 extend to enlarging its rights under a
17 pre-petition contract or rewriting the
18 terms of a pre-petition contract that was
19 said by the Court in EES Lambert
20 Associates which is 62 BR 328. Your
21 Honor, I'd like to spend also, if I
22 could, a moment talking about --

23 THE COURT: I'm sorry, I don't
24 quite follow the logic of that. I mean,
25 certainly it applies in certain

1 DELPHI CORPORATION 70
2 situations where the other party to the
3 contract doesn't agree, but the debtor is
4 using these agreements as a starting
5 point for how its relationship with GM
6 and the union, on these issues, is going
7 to be dealt with. How is this different
8 than Delphi agreeing to pay X dollars and
9 the union agreeing to accept X dollars
10 and GM saying we'll pick up X dollars of
11 that but you have to agree to give us a

12 little bit -- or a lot according to you,
13 of X dollars in this respect. I mean,
14 why would one be prohibited and the other
15 wouldn't be?

16 MR. SEIDER: Your Honor, I think
17 what you're describing would be a post-
18 petition amendment of a pre-petition
19 agreement that could come up in the
20 context, or would come up in the context
21 of an assumption and a modification of
22 the 365, or more importantly, or perhaps
23 more accurately in these circumstances, a
24 new agreement. And, if that new
25 agreement, were put before the creditor

1 DELPHI CORPORATION 71
2 body, I presume that we would have what
3 we haven't had from the debtors. We
4 would have some evidence from the debtors
5 about what the debtors actually project
6 the number of flow backs will be, what
7 the cost of that is going to be in dollar
8 terms, and we have --

9 THE COURT: But it is the same
10 analysis under 365, except for the rights
11 of cure, as under 363(b)?

12 MR. SEIDER: Well, Your Honor --

13 THE COURT: I mean, don't accept
14 that I blindly agree with the debtor's
15 business judgment --

16 MR. SEIDER: Yes.

17 THE COURT: -- in that argument,
18 but, I mean, I don't see where else
19 there's a distinction between 363 --

20 MR. SEIDER: Your Honor --

21 THE COURT: -- if we can accept
22 that the estate is burdened with
23 additional administrative costs --

24 MR. SEIDER: Yes.

25 THE COURT: -- if it's an

1 DELPHI CORPORATION 72
2 assumption.

3 MR. SEIDER: Yes. Well, first Your
4 Honor, there's been no showing the 365 is
5 applicable here that this is an executory
6 contract. It would certainly strike --

7 THE COURT: I know, but that's why
8 they're not doing it under 365. They're
9 going under 363(b).

10 MR. SEIDER: I'm sorry, Your Honor,
11 I was looking at a note. If Your Honor's
12 question was they're not going under 365
13 because 365 isn't appropriate here, so

14 they're going to 363, that in it of
15 itself, doesn't make 363 available for
16 this relief. We haven't -- we don't have
17 a -- and I think the debtors cases sort
18 of points this out, we don't have a new
19 transaction with a new set -- with new
20 consideration being provided to and from
21 the parties like in the Montgomery Ward
22 case, the debtors cited who were a KERP
23 program was approved under Section 363
24 above the objection of some parties based
25 upon the debtors business judgment. I

1 DELPHI CORPORATION 73
2 think if there were cases out there in
3 which Courts had authorized the debtor to
4 go back and redo its pre-petition
5 agreements outside of a planned context
6 under 363, the debtors would have found
7 them and they would have been in the
8 debtor's papers, but they're not. And I
9 think that that's rather telling. We
10 looked from the time we got the debtors
11 papers yesterday --

12 THE COURT: Well no one cited me
13 anything to the contrary other than
14 Braniff. And, I don't find Braniff

15 particularly moving here.

16 MR. SEIDER: I think that the case
17 I just mentioned to Your Honor, the
18 Farmor case in which the debtor,
19 notwithstanding the consent of the
20 limited partners, was not allowed to use
21 363 to rewrite its pre-petition
22 partnership agreement. I think that's
23 probably more in point than what we've
24 seen from the debtors on this point.

25 THE COURT: Okay.

1 DELPHI CORPORATION 74

2 MR. SEIDER: Your Honor, I would
3 also if I could, like to talk for a
4 moment about the other line of authority
5 that the debtors have relied on. The
6 class action settlement principal that,
7 as a general matter when a class action
8 is settled under Rule 23, the Court
9 should not insert itself in the deal that
10 the parties have made. I think, Your
11 Honor, there's a huge distinction between
12 a Rule 23 class action settlement, on the
13 one hand, and a Chapter 11 case on the
14 other. In the Rule 23 context of course,
15 if the class has been adequately formed,

16 adequately drawn, all of the parties with
17 an economic stake in the settlement or
18 have been represented or are represented
19 at the bargaining table. In this
20 situation the committee and other parties
21 in interest were not at the bargaining
22 table when this deal was done. I don't
23 now if we were intentionally excluded or
24 somebody just forgot to put our
25 invitation in the mail, but we weren't

1 DELPHI CORPORATION 75
2 there. And, I think that distinguishes
3 this case from --

4 THE COURT: But I thought all they
5 were saying there that my alternatives
6 here are either to approve their
7 performance under this agreement or to
8 disapprove it. And not to impose upon
9 the other parties terms that the other
10 parties wouldn't agree to. Well I'm
11 certainly free to tell everyone that I
12 would approve it under certain
13 conditions. But aren't they right; I
14 can't tell GM and the UAW that they must
15 perform this agreement with the following
16 additional terms to it?

17 MR. SEIDER: No. We certainly
18 agree with that, Your Honor. And the UAW
19 is not really on the table here. We have
20 no quibble with the benefits for their
21 workers.

22 THE COURT: No. I understand that.
23 I was just --

24 MR. SEIDER: It's a GM issue.

25 THE COURT: Right.

1 DELPHI CORPORATION 76

2 MR. SEIDER: Yes, Your Honor,
3 that's right. And I think you've
4 actually sort of hit upon the next case I
5 wanted to talk about. It's a Second
6 Circuit decision in the class action
7 context, actually. Plummer v. Chemical
8 Bank, 668 Fed. 2d, 654. The Court there
9 said in a foot note and I think it's
10 probably dicta but I think it's
11 interesting nevertheless. That a
12 dissatisfied with a class action
13 settlement with circumspection may edge
14 the parties in which, what he believes,
15 to be the right direction. So I think
16 that sort of covers what Your Honor was
17 hinting at a moment ago.

18 THE COURT: Okay.

19 MR. SEIDER: Now, Your Honor, we're
20 told today that this agreement must be
21 approved on these terms now as the first
22 step in a comprehensive labor deal. We
23 actually, Your Honor, disagree with that.
24 The stakes from our perspective are so
25 high for GM and for Delphi that it's

1 DELPHI CORPORATION 77
2 illogical to think that if this deal is
3 not approved today on these terms,
4 somehow that would preclude the
5 possibility of an overall settlement of
6 the labor issues that face GM and the
7 labor issues, more importantly from our
8 perspective that face Delphi. And I
9 think, Your Honor, the fact that we have
10 the filing of the motion to approve this
11 Attrition Program followed by the filing
12 of the Section 1113 or 1114 motions
13 underscores and demonstrates that point
14 quite effectively. Furthermore, Your
15 Honor, if the Court were to approve the
16 motion today on the terms that are set
17 forth, and then the 1113 and the 1114
18 process go forward, and something

19 intervenes, some factor gets in the way
20 and there is not a global final
21 resolution of the labor situation,
22 unsecured creditors of this case are
23 going to be saddled with about 3 billion
24 dollars of claims on the promise that by
25 approving this agreement today, we were

1 DELPHI CORPORATION 78
2 going to get to a final labor resolution.
3 Lastly, Your Honor, I do want to make one
4 other point. We've been down this path
5 in this case before. Right before
6 Thanksgiving, the creditors' committee
7 was told that if we did not immediately
8 agree to allow pre-petition vendors to
9 receive hundreds of millions of dollars
10 in payments on their pre-petition claims,
11 that when their supply contracts expire
12 at the end of December and then in the
13 early part of this year, that the company
14 would no longer receive shipments from
15 those vendors and the company would fall
16 into a tailspin, and the case would
17 crater. Obviously that's not what
18 happened here. Excuse me, that's not
19 what happened. And, Your Honor, the

20 answer at that time, when the debtors
21 came forward on that program, the answer
22 from the committee and with some guidance
23 from the Court, the answer was no. The
24 debtor's problems need to be solved --

25 THE COURT: Well, I don't think it

1 DELPHI CORPORATION 79
2 was implied -- no, I think that there was
3 a modification of the program.

4 MR. SEIDER: Precisely, Your Honor.
5 But -- that's exactly the point. There
6 was a no from the committee, let's sit
7 down, let's talk, and let's work out a
8 sensible solution to the real problem.
9 But to come and say it must be done
10 today, and it must be done in a way that
11 the bankruptcy code doesn't necessarily
12 countenance. And, by the way, if we're
13 wrong, you unsecured creditors; you're
14 the ones who are going to shoulder the
15 full burden of our mistake. That's what
16 we said no to at Thanksgiving, Your
17 Honor, or around Thanksgiving. And
18 ultimately, we were able to work it out.
19 I think we're in the same position now
20 and I think that the same result ought to

21 be what obtains.

22 THE COURT: Well, all right. I
23 guess -- I'm coming back, though, to the
24 notion of what it really means even on
25 the down side. And I agree with Mr.

1 DELPHI CORPORATION 80
2 Rosenberg that the committee needs to
3 focus on the down side as well as the up
4 side. If in fact, the good efforts of
5 all the parties involved don't result in
6 a consensual labor agreement, it's not --
7 again, I keep coming back to the fact
8 that it appears to me that GM still has
9 -- well, that the workers still have the
10 ability to flow back and assert other
11 rights against the debtors. And that,
12 although arguably, or maybe not even
13 arguably, that they would be under a
14 different agreement, GM would have claims
15 that it could assert as a result of that.
16 And, so, it doesn't seem to me that it's
17 a, you know, 3 billion dollars versus
18 zero dollars calculation. If it would,
19 it would be a pretty easy -- you know,
20 pretty easy motion to deal with. It
21 doesn't seem to me that that's the right

22 calculation.

23 MR. SEIDER: Your Honor, it may be
24 something between zero and three billion,
25 but I think that the bottom line is, if

1 DELPHI CORPORATION 81
2 they get the leg up on the Employee
3 Matters Agreement, it's going to be a
4 much larger number than it will be if
5 they don't.

6 THE COURT: But, how much? Because
7 there are clearly benefits to the debtor
8 to do this too. Including GM's agreement
9 to take on liabilities that it would not
10 have to take on, and not to assert an
11 administrative claim, and a lot of other
12 things, the timing of it.

13 MR. SEIDER: I'm not so sure that
14 GM wouldn't have to take on those
15 liabilities because of the existence of
16 and the language in the Benefit Guaranty.
17 Those are agreements that GM made with
18 the --

19 THE COURT: Well, but what about
20 the lump sum instead of payment? The
21 lump sum payments?

22 MR. SEIDER: No. The lump sum, I

23 don't think is necessarily contemplated
24 by the Benefit Guaranty. That's correct.
25 That is a much smaller number.

1 DELPHI CORPORATION 82

2 THE COURT: Well, what is that
3 number?

4 MR. SEIDER: Thirty-five thousand
5 dollars per employee. Three hundred
6 million and a hundred percent.

7 MR. ROSENBERG: If everybody
8 accepts that.

9 THE COURT: Okay. Well, I mean,
10 again, to me, if the difference between
11 doing this under the employee agreement,
12 as opposed to the indemnity agreement is
13 around 300 million, it's one calculation.
14 If it's around a billion or two billion
15 it's another calculation. And, I still
16 don't -- I don't know the answer to that
17 question. But I --

18 MR. SEIDER: I think to know the
19 answer to that question, we'd have to
20 know a couple of things. We'd have to
21 know what is the level of OPEB going to
22 be in the debtors next CBA? And what is
23 it going to be in GM's. And, Your Honor,

24 will GM be successful in asserting
25 elsewhere what it asserted in litigation

1 DELPHI CORPORATION 83
2 that it recently compromised in the
3 Eastern District of Michigan regarding
4 its unilateral right to modify OPEB.
5 Because, Your Honor, if there is a
6 modification, as we discussed earlier,
7 the difference between the fully loaded
8 OPEB under the debtors current CBA and
9 the modified amount will be value that's
10 captured by GM if the Employee Matters
11 Agreement is used. I don't think that
12 that would be the case under the Benefit
13 Guaranty.

14 THE COURT: Okay. Before you sit
15 down, there was one other point I didn't
16 fully understand in the objection. In
17 paragraph 28, it says "finally the
18 program would provide an entirely new
19 claim, in favor of GM, for the healthcare
20 and life insurance benefits it provides
21 to active employees that flow back to
22 GM." Why is that entirely new?

23 MR. SEIDER: May I have a moment,
24 Your Honor?

25 THE COURT: Yeah. It emphasized

1 DELPHI CORPORATION 84

2 the word active and that's why I didn't
3 follow. I thought the flow back right
4 belonged to active employees. But --

5 MR. SEIDER: Yes, Your Honor. The
6 right to flow back does belong to active
7 employees. Allowing the claim to GM for
8 the active employees who flow back for
9 health care and life insurance benefits
10 is outside the scope of the Benefit
11 Guaranty and hence the indemnity and
12 there has been no conclusion as far as we
13 are aware that the U.S. Employee Matters
14 Agreement necessarily can be applied on a
15 post-petition basis to cover that.

16 THE COURT: Why is that?

17 MR. SEIDER: Well, as to the
18 Benefit Guaranty, Your Honor, I don't
19 think it addr --

20 THE COURT: No. It's the second
21 point about why the U.S. Employee Matters
22 Agreement wouldn't cover it?

23 MR. SEIDER: Well first to this
24 threshold question, Your Honor, whether
25 that agreement is enforceable on a post-

1 DELPHI CORPORATION 85

2 petition basis. And then there is a
3 question as to whether --

4 THE COURT: Because it's arguably
5 executory and can be rejected?

6 MR. SEIDER: Or arguably, not
7 executory, and then it's just a simple
8 claim on the petition date. That hasn't
9 been explored. Additionally, Your Honor,
10 I believe that there is nothing
11 necessarily in the Employee Matters
12 Agreement that speaks to the benefits
13 that are described in the first part of
14 that paragraph 27, for active employees.

15 MR. BIENENSTOCK: May I help bun
16 this, Your Honor.

17 THE COURT: Okay.

18 MR. BIENENSTOCK: Not wanting to
19 figure out of order, but I think the
20 short answer to this question is that the
21 flow back that we're talking about here,
22 are not flow backs that GM would have to
23 allow other than under the Special
24 Attrition Program. So we're agreeing to
25 take flow backs that we wouldn't

1 DELPHI CORPORATION 86

2 otherwise have to take.

3 THE COURT: Okay.

4 MR BIENENSTOCK: And instead of
5 getting it admin claim, we agree to take
6 a general unsecured pre-petition claim.

7 THE COURT: Okay. I guess that's
8 right. If the agreement wouldn't apply
9 in the first place, then you wouldn't
10 have to take them back. Okay. All
11 right. That makes sense to me, do you
12 agree with that?

13 MR. SEIDER: I'm sorry, I didn't
14 hear quite everything that's been said.

15 THE COURT: What Mr. Bienenstock
16 said, is you were right in one respect
17 which is that the agreement really
18 doesn't require them to take these
19 employees back. But, that you were wrong
20 in the sense that because it doesn't
21 require to take them back, now that they
22 are taking them back and paying for them,
23 they should get recompense for that and
24 they agree to do that on an unsecured
25 pre-petition claim basis as opposed to --

1 DELPHI CORPORATION 87

2 MR. SEIDER: We would say, Your
3 Honor, that there are existing vehicles
4 under which that claim could come in and
5 it doesn't necessarily have to be the
6 Employee Matters Agreement protected by a
7 defense established under the program
8 that one can't say that that agreement is
9 not applicable to what's happening here.

10 THE COURT: So you say that they
11 might be able to be forced to take back
12 active employees under the
13 indemnification agreement?

14 MR. SEIDER: No, Your Honor. What
15 I'm saying is if employees have their
16 benefits reduced by something that Delphi
17 does as a result of financial distress,
18 they have claims under the Benefit
19 Guaranty against GM, GM we believe will
20 assert rights under the indemnity
21 agreement back for what it pays under the
22 Benefit Guaranty.

23 THE COURT: Leaving aside the flow
24 back issue?

25 MR. SEIDER: Yes, Your Honor,

1 DELPHI CORPORATION 88
2 leaving aside the flow back issue. And
3 just to make sure that the point was
4 clear, the check-the-box program, in the
5 attrition program is something entirely
6 new. It's not something that's in the
7 Employee Matters Agreement.

8 THE COURT: Okay.

9 MR. SEIDER: Thank you very much,
10 Your Honor.

11 THE COURT: Okay.

12 MR. FOX: Good afternoon, Your
13 Honor. Edward Fox from Kirkpatrick &
14 Lockhart Nicholson Graham on behalf of
15 Wilmington Trust Company's indenture
16 trustee.

17 Your Honor, I think -- my head is
18 still spinning from looking at these
19 agreements and trying to figure out what
20 the attrition agreement really means, but
21 I've certainly been helped to at least
22 understand what some of the parties think
23 it means based on some of the additional
24 pleadings and the discovery that we've
25 had since the motion was filed.

2 At a minimum, though, it seems to
3 me that there is not a meeting of the
4 minds here as to what this attrition
5 agreement means at least with respect to
6 paragraph 7. And I'd also add, I think
7 at the outset, that, at a minimum, Your
8 Honor needs to understand what the
9 agreement means and everybody needs to be
10 clear as to what Your Honor's
11 understanding is when you approve it
12 because that's the basis on which you're
13 going to make your determination, based
14 on your understanding of what the
15 agreement means as to whether it's an
16 appropriate agreement or not.

17 It seems to me, though, that, based
18 on some of the pleadings and the
19 deposition testimony, that I don't even
20 think that there is an agreement to the
21 extent that there is a meeting of the
22 minds with respect to paragraph 7. If
23 you look at GM's reply, which is helpful,
24 quite frankly, in paragraph 2, the last
25 sentence on page 3, they say "GM is

3 required by the liability documents or
4 related documents or by any other
5 agreements for the benefit of the debtors
6 for which it is entitled to
7 consideration. GM's right to assert
8 general unsecured claims under any of the
9 liability documents is simply the
10 consideration negotiated by GM and Delphi
11 for such contributions."

12 On the other hand, if you look at
13 the deposition testimony, for instance,
14 of John Sheehan, and he indicated that he
15 was one of the people who presented this
16 agreement to the board for the board's
17 approval, as I recall from the testimony,
18 that he has a different view. When he
19 was asked about this, and I'm looking at
20 page -- we'll start on page 135, line 19
21 just to keep it short. The question, I
22 believe is from Mr. Brant, was "You
23 participated in the presentation of these
24 proposals to the board. We heard
25 conversation about that earlier and

1 DELPHI CORPORATION 91
2 referring here to the language in
3 paragraph" -- it says "9. Do you have

4 any idea what is being" -- and I believe
5 it should be 7 based on the rest of the
6 question. It says "Do you have any idea
7 what is being conclusively deemed to be
8 comprehended by your constituting your
9 pre-petition general unsecured claim?"
10 The answer: "I can only explain to you
11 what I understand is meant by those
12 words." Question: "What is meant by
13 those words?" Answer: "What I just
14 said. That GM is neither advantaged by
15 or disadvantaged by this agreement in its
16 ability to assert claims for obligations
17 that it has assumed as a result. As it
18 relates to OPEB or anything else under
19 paragraphs 4 or 7 under this agreement."

20 Now, GM is saying, as consideration
21 for what we're doing here, we're getting
22 something we didn't already have. And
23 Mr. Sheehan is saying, they're not
24 getting that they didn't have. They're
25 not any worse off; they're not any better

1 DELPHI CORPORATION 92
2 off. So, the question is, which is it?
3 And it makes -- and if they don't agree
4 on that as to whether they're getting

5 something additional or not, then there's
6 no meeting of the minds here to have an
7 agreement.

8 THE COURT: But GM just said we're
9 giving something so we should get
10 something back.

11 MR. FOX: Well, I understand. And
12 there's nothing wrong with that argument.

13 THE COURT: But how is that
14 different from what Mr. Sheehan is
15 saying, which is that --

16 MR. FOX: Mr. Sheehan is saying
17 they're not getting anything by this
18 agreement in their ability to assert
19 claims.

20 THE COURT: No. Well, at least I
21 read it to say that what they're getting
22 back is fair. That's what I read it to
23 say. That they're not -- you know, that
24 it's a fair trade.

25 MR. FOX: No. Well, he --

1 DELPHI CORPORATION 93

2 THE COURT: People may disagree
3 with whether it's a fair trade or not,
4 but -- I don't know that this is that
5 productive anyway. I mean, I don't

6 understand where you're going with this.

7 MR. FOX: If the parties are not in
8 agreement as to what this agreement is --

9 THE COURT: No, but that's not -- I
10 don't think that's -- when you say that,
11 are you talking about what the agreement
12 means or what its underpinnings are?

13 MR. FOX: No, what it means.

14 THE COURT: Well, I don't think
15 that's -- I think it's not very
16 productive to look at Mr. Sheehan's
17 testimony on that point. At least not
18 that section. I mean, I understand that
19 the agreement's language as to the claim
20 that GM can assert is not a model of
21 clarity, and that's why I spent some time
22 with committee counsel on it, but I think
23 the order as revised as proposed at least
24 makes it more clear. Although, I think
25 there's still some doubt, at least in my

1 DELPHI CORPORATION 94

2 mind, as to what it means to say it can
3 assert a claim under the U.S. Employee
4 Services Agreement. Whether that claim
5 is still subject to all of the arguments
6 that -- as to, I guess, avoidance or

7 subordination that the committee would
8 make in respect of the indemnity
9 agreement. But, other than that, it
10 seems to be pretty clear to me that
11 everyone's rights are preserved to object
12 and GM is saying this is an unsecured
13 claim.

14 MR. FOX: Well, except, again, when
15 you --

16 THE COURT: And not a priority
17 claim.

18 MR. FOX: No. That, I think, is
19 clear. But the question in the new
20 language that's being proposed, again, is
21 with the exception that's at the end that
22 Mr. Seider would have not preferred to be
23 in there, either.

24 THE COURT: Right.

25 MR. FOX: 'Cause there are really

1 DELPHI CORPORATION 95
2 two issues as I see it at this point. On
3 that point. One is are GM's rights
4 enhanced to assert the claim with respect
5 to these agreements? Secondly, what are
6 the other parties able to do in terms of
7 objecting? If you can object -- if you

8 can show up later and object to the claim
9 and say, look, the underlying agreements,
10 laying aside the attrition agreement,
11 don't provide for this, that's one thing.
12 GM's not saying this.

13 THE COURT: Well, it's clear to me
14 that that's not what the agreement is.

15 MR. FOX: Okay.

16 THE COURT: It's clear to me that
17 what they bargained for is to say that
18 these various payments would be
19 assertable under this agreement and that
20 -- the only area that's not clear to me
21 is if by that language it's intended that
22 any issues as to the avoidability or
23 infirmities of the other agreements, not
24 based on their language not applying but
25 based on the circumstances under which

1 DELPHI CORPORATION 96
2 they were entered into, is somehow
3 preserved.

4 MR. FOX: Well, I understand Your
5 Honor's view and I'll move on based on
6 that.

7 THE COURT: Well, I mean -- no.
8 It's a basis -- you're certainly free to

9 object on the basis that that's not a
10 good deal, but I think that's what it
11 means at least. I mean, what else could
12 it mean?

13 MR. FOX: Well, it is, I think, and
14 certainly until we got various statements
15 from various parties, was extremely
16 obtuse as to --

17 THE COURT: Okay.

18 MR. FOX: what it was supposed to
19 mean.

20 THE COURT: All right.

21 MR. FOX: Let me just stay on a
22 related point and, if I could for a
23 moment, it was a point you raised with
24 Mr. Seider about the Court's ability to
25 change the underlying pre-petition

1 DELPHI CORPORATION 97

2 agreements. And I would take a different
3 tack than Mr. Seider, although I think
4 we'd get to the same result.

5 The question ultimately, I think,
6 that's going to have to be answered, and
7 I think in whatever your ruling is today
8 may fix that right, so it's not something
9 that could be raised down the road but

10 has to be raised now. Is whether not
11 whether GM gets a claim but whether GM
12 can be considered a creditor. If you
13 look at the definitions in the Code, a
14 claim's right to payment. And it doesn't
15 distinguish when that right arose. On
16 the other hand, a creditor is one who
17 holds a claim that's based on a pre-
18 petition obligation. Here, what's
19 happening is that we're changing the
20 rights of GM under these agreements and,
21 in effect, trying to turn them into a
22 pre-petition creditor which they are not
23 and, under the definitions of the Code,
24 can never be. Moreover --

25 THE COURT: But isn't that to the

1 DELPHI CORPORATION 98
2 estate's benefit? Would you rather have
3 them be an administrative creditor?

4 MR. FOX: Well, the debtor
5 apparently is not prepared to give them
6 that. So --

7 THE COURT: I know, but that didn't
8 really answer my question. You wouldn't
9 give that to them, either, would you?

10 MR. FOX: No, I would not. But

11 that doesn't mean that we can rewrite the
12 language of the statutes to provide
13 what's being provided here. And under
14 5.01, only --

15 THE COURT: Well, wait. An
16 administrative creditor can always agree
17 to take their claim at a lower priority.

18 MR. FOX: Perhaps.

19 THE COURT: Well --

20 MR. FOX: If that's what they -- I
21 mean, if that's where the negotiation led
22 and that's what they want to get to then
23 I suppose they could --

24 THE COURT: Isn't that what
25 happened here?

1 DELPHI CORPORATION 99

2 MR. FOX: I suppose they could
3 agree to that.

4 THE COURT: Okay.

5 MR. FOX: That's not what this
6 agreement provides, though, in the way
7 it's written.

8 THE COURT: Well, it says they
9 won't assert administrative -- where is
10 it?

11 MR. FOX: Yes, it does, quite

12 clearly.

13 THE COURT: Okay.

14 MR. FOX: That's right. It says
15 that they can assert a pre-petition
16 unsecured claim.

17 THE COURT: Right. And the
18 proposed order is even clearer on that
19 point.

20 MR. FOX: I understand that. And
21 that's why I'm raising the point now
22 because I don't want to wait until later
23 and lose the point.

24 THE COURT: Okay.

25 MR. FOX: But just to finish it

1 DELPHI CORPORATION 100
2 briefly. Under Section 5.01, you have to
3 be a creditor. Which means, you have a
4 pre-petition -- a claim that arose pre-
5 petition in order to file a proof of
6 claim and you can't be scheduled unless
7 you're a creditor, as well, with a pre-
8 petition obligation. So, I'm not sure
9 that by what we're doing here to get to
10 sort of roll back the clock to change the
11 agreement in the way that it's being
12 proposed in order to allow GM to do what

13 they're proposing to do.

14 THE COURT: I'm dismissing that.

15 They can file a contingent unliquidated
16 claim in respect of their existing
17 agreements.

18 MR. FOX: Yes, absolutely.

19 THE COURT: And they can assert on
20 administrative expense claim immediately
21 when they provide post-petition
22 services, benefit, consideration,
23 whatever.

24 MR. FOX: If the agreement had not
25 provided otherwise, I suppose they could.

1 DELPHI CORPORATION 101

2 THE COURT: Okay. All right. I
3 think I understand.

4 MR. FOX: In Section -- I don't
5 know if it's 7(b) or 7(c) -- is very
6 specific. And you understood that I was
7 getting to this issue in the cross-
8 examination. That the claim by GM will
9 be filed against the estate of Delphi
10 Corporation. Not against the debtors
11 generally, but very specifically against
12 Delphi Corporation. That creates a
13 problem for the senior notes and

14 debentures as a creditor of Delphi
15 Corporation. What end up happening here
16 is that the subsidiaries benefit 'cause
17 they're the ones that are employing these
18 -- they're actually using the services
19 and paying for the services, apparently,
20 of the union members, but the claim is
21 not being asserted against them. So,
22 they get the benefit of the flowbacks or
23 the lower wage rates or whatever the
24 benefits are of this agreement and, in
25 essence, Delphi Corp. gets stuck with the

1 DELPHI CORPORATION 102
2 bill. And, in addition to that, what's
3 likely to happen, I suspect, and
4 certainly has been indicated in the 11.13
5 motion, is that GM has continually, over
6 the course of its relationship with
7 Delphi, and presumably will continue to
8 ask for price reductions. And to the
9 extent that the subsidiaries now have
10 lower wage rates and have a better cost
11 structure, then going forward GM will try
12 to attempt to take advantage of that for
13 its own benefit while at the same time
14 keeping its claims that it's going to

15 have against Delphi Corporation.

16 Now, if you look at the structure
17 chart, you can see that Delphi
18 Corporation indirectly owns 87 percent of
19 the offshore entities which are,
20 according to Mr. Sheehan's testimony,
21 profitable and not debtors in these
22 cases. On the other hand, through Delphi
23 Automotive Systems, LLC, it is the
24 indirect parent of the U.S. entities
25 which are, according to Mr. Sheehan's

1 DELPHI CORPORATION 103

2 testimony, decidedly unprofitable and
3 they're going to remain unprofitable,
4 although perhaps less so if this
5 agreement takes effect.

6 If GM were to assert -- so two
7 things happen by where this claim is
8 placed. Number one, GM has a better
9 claim because it's at the parent which
10 owns a significant portion of the
11 offshore entities which are profitable.
12 Which is better than having a claim at
13 the U.S. subsidiaries which are in
14 bankruptcy. And secondly, if GM were to
15 file these claims as unsecured claims

16 against the U.S. entities, it probably,
17 given the magnitude of the claims, the
18 likelihood is they'd wind up owning these
19 plants which is the last thing they want
20 'cause then they'd end up paying UAW
21 wages under their agreements to these
22 employees that they're trying to get the
23 benefit of reduced wages by.

24 But from the perspective of this
25 particular group of creditors, the

1 DELPHI CORPORATION 104
2 creditors at Delphi Corp., there's a real
3 question here as to the fairness of this
4 arrangement and certainly, from Mr.
5 Sheehan's testimony, we don't when, if
6 ever, Delphi Corp. will assert any kind
7 of a claim against the subsidiaries to
8 try to recover some of the benefit from
9 this.

10 THE COURT: All right. Let me make
11 sure I understand a little more about
12 this. The agreements between GM and
13 Delphi that are involved here, the pre-
14 petition agreements, who are they
15 actually between on the Delphi side?

16 MR. FOX: The named party in the

17 agreement, apparently, is only Delphi
18 Corporation.

19 THE COURT: Okay. So, except in
20 respect of the new rights that Mr. Seider
21 talked about, that's where the claim
22 would be anyway, right? Of GM?

23 MR. FOX: I'm sorry. Which
24 agreements were you referring to?

25 THE COURT: The indemnification

1 DELPHI CORPORATION 105
2 agreements.

3 MR. FOX: Well, the Employee
4 Matters Agreement and, I believe, the
5 indemnification of the Delphi
6 Corporation, the Master Separation
7 Agreement, is with Delphi Corporation, as
8 well as certain other subsidiaries. So,
9 yeah. I guess, if you assume that but
10 for this program, the same claims will
11 arise and GM will then assert them back
12 --

13 THE COURT: But, did --

14 MR. FOX: -- then I guess you would
15 say, if they assert them under a couple
16 of those agreements that are just against
17 Delphi Corp. that you'd have the same

18 result. I think --

19 THE COURT: Well, except -- I don't
20 know. Because you said -- are those --
21 which subsidiaries are also parties to
22 those agreements?

23 MR. FOX: The one that has parties
24 that are subsidiaries is the Master
25 Separation Agreement.

1 DELPHI CORPORATION 106

2 THE COURT: All right. So there,
3 there would be, I guess, contribution
4 claims.

5 MR. FOX: Well, they're all --

6 THE COURT: Against the
7 subsidiaries.

8 MR. FOX: I think there are four
9 different entities would be jointly and
10 severally liable presumably.

11 THE COURT: All right. So, in
12 terms of the argument that Delphi
13 Corporation is saddled with more under
14 this arrangement?

15 MR. FOX: It's saddled with all of
16 them.

17 THE COURT: Well, but -- that's
18 right. Saddled with all. Isn't it only

19 they had saddled with more because it
20 would be saddled with a lot anyway? Or
21 am I missing something?

22 MR. FOX: Potentially, if you make
23 certain assumptions. If you assume that
24 the only solution to Delphi's problem is
25 to reduce the wage rates and assume that

1 DELPHI CORPORATION 107
2 the union employees are paid too much as
3 opposed to, for instance, assuming that
4 GM pays too little for the product that
5 it receives. But if you take the view
6 that the only solution to the problem is
7 to reduce the wages and benefits to the
8 employees and as a result of that,
9 depending on what happens, could
10 potentially trigger some of these
11 agreements, then yes, under those
12 circumstances and those assumptions,
13 those obligations potentially would flow
14 back. Because the UAW, I guess, would
15 claim on its benefit guarantee against
16 GM. GM would then claim back against
17 Delphi Corporation on its benefit
18 guarantee.

19 THE COURT: And is there anything

20 in the agreement that prevents Delphi
21 Corporation from asserting some form of
22 inter-company claim against the
23 subsidiaries that employ these people and
24 received the first benefit? I understand
25 the argument that it owns the equity in

1 DELPHI CORPORATION 108
2 the corporation. But the point Mr. Fox
3 is making is that that's all well and
4 good but the offshore entities is where
5 most of the value is and not in these
6 subsidiaries.

7 MR. FOX: I don't think we know
8 whether the equity in the U.S. entities
9 has any value whatsoever.

10 THE COURT: Right. So, I guess --
11 but, ultimately, is there any issue of
12 having an inter-company claim?

13 MR. BUTLER: Your Honor --

14 THE COURT: Maybe it's not --
15 according to Mr. Fox, maybe it's not
16 worth that much, but --

17 MR. BUTLER: First of all, Your
18 Honor, there's no preclusion. Your
19 question was is there anything that
20 precludes it. The answer is no. But, I

21 just realized the answer to the factual
22 question you asked. The operative
23 agreements here, the UAW collectively-
24 bargained agreements, the material legacy
25 agreements with General Motors are all at

1 DELPHI CORPORATION 109
2 Delphi Corporation. The same party that
3 entered into this agreement before the
4 Court. The Master Separation Agreement
5 which is admitted into evidence Exhibit 2
6 is the only one that has other parties in
7 addition to Delphi Corporation. It has
8 Delphi Automotive Systems, LLC, Delphi
9 Technologies, Inc. and Delphi Automotive
10 Systems Holding, Inc. But the U.S.
11 Matter -- Employ Matters Agreement,
12 admitted into evidence Exhibit #3, is
13 only with Delphi and the UAW Delphi
14 Memorandum of Understanding for the
15 Benefit Plan Treatment, admitted into
16 evidence Exhibit #4 is only with Delphi
17 Corporation, as well. And the UAW -- the
18 collective bargaining agreements are at
19 Delphi Corporation. All those
20 liabilities, all the issues we're dealing
21 with are at the Delphi Corporation level.

22 And I think the arguments for another day
23 is to whether anyone below that ought to
24 be making contributions or not there's a
25 very cohesive and cogent argument that

1 DELPHI CORPORATION 110
2 can be made, frankly, that all the rest
3 of the wholly-owned subsidiaries are
4 doing nothing but carrying out the
5 obligations and performing the
6 obligations that the parent company is
7 primarily liable for. And does it for
8 the benefit of the parent company. And
9 we can deal about it another day but
10 that's not what's before the Court today,
11 Your Honor. Ultimately, what's before
12 the Court is all these matters are a
13 parent company obligation. This
14 agreement is a parent company obligation.

15 MR. KESSLER: Your Honor, may I
16 make a statement to make sure that
17 there's no confusion in the record? You
18 heard the name Delphi Automotive Systems,
19 LLC. If Your Honor goes back to look at
20 some of the agreements that Mr. Butler
21 referred to, you will see the name on the
22 agreement as Delphi Automotive Systems

23 Corporation. They are not the same
24 company. Delphi Automotive Systems
25 Corporation is the predecessor name of

1 DELPHI CORPORATION 111

2 Delphi Corporation.

3 THE COURT: Okay.

4 MR. KESSLER: So it's a different
5 company from what you've heard as Delphi
6 Automotive Systems, LLC.

7 THE COURT: Okay.

8 MR. FOX: I'm not mis -- I
9 understand the distinction between the
10 entities.

11 THE COURT: Right. But, Mr. Fox,
12 let me just ask you. Is your position
13 then different than the committee's in
14 that you're suggesting that there
15 shouldn't be an agreement involving a
16 soft landing at this point?

17 MR. FOX: Except -- no, no. The
18 idea of coming up with a way to provide a
19 soft landing for the employees is not
20 something that we take issue with. We
21 understand that.

22 THE COURT: Okay.

23 MR. FOX: Assuming you go down this

24 particular path. Which is to reduce the
25 level of employees significantly and cut

1 DELPHI CORPORATION 112
2 the wages of the rest.

3 THE COURT: Well, that's what I'm
4 saying. But, I mean, that is one aspect
5 of this motion is going down that path.

6 MR. FOX: Well, that's right. And
7 I'm -- but I'm not sure that -- and part
8 of the problem, though, and, really,
9 that's part of the argument, is that if
10 you go down this path, you're taking on
11 these liabilities on the assumption that
12 you're going to be able to finish going
13 down this path and, therefore, get the
14 rest of the benefit that this is heading
15 towards. If it turns out that you can't
16 do that for whatever reason, maybe the
17 union is intransigent and says, you know
18 what? We're never coming back, then --
19 and we're going to go on strike forever.
20 At that point, Delphi may have to turn
21 back to GM and say, we have to go another
22 route. Now, at that point --

23 THE COURT: Well, I guess, if
24 that's the case, I guess GM is not going

25 to negotiate a date down the OPEB,

1 DELPHI CORPORATION 113

2 either.

3 MR. FOX: Well --

4 THE COURT: I'm not being entirely
5 facetious. I mean, it seemed to me that
6 the strongest argument that the committee
7 had is that the debtor is locking itself
8 in, at least as far as the GM claim on
9 OPEB for the people who migrate now --

10 MR. FOX: No, I absolutely agree
11 with them.

12 THE COURT: But if this thing falls
13 apart, I have to assume that -- no one
14 can predict what would happen, but it's
15 probably falling apart because people
16 aren't willing to move on anything.

17 MR. FOX: That's certainly
18 possible. There are different parties
19 and they have different tolerance levels
20 for bait, presumably. And in all these
21 negotiations that -- you know, you get to
22 that point of deciding who is willing to
23 bear what burden.

24 THE COURT: On the provision of the
25 agreement that says that the claim will

1 DELPHI CORPORATION 114

2 be asserted against Delphi Corp.

3 MR. FOX: Yes.

4 THE COURT: What is your solution
5 to your problem. Saying it's asserted
6 against the U.S. subsidiaries?

7 MR. FOX: Well, it would certainly
8 --

9 THE COURT: Who use the services of
10 UAW employees?

11 MR. FOX: I would certainly feel
12 better if there was some allocation of
13 that and I would certainly feel better if
14 counsel to Delphi Corp. took the view
15 that the subsidiaries are receiving
16 benefit, not doing a favor to Delphi
17 Corp. by employing these people, but have
18 an obligation to pony up to Delphi Corp.
19 And I'm not hearing that. And it makes
20 me very uncomfortable.

21 THE COURT: Well, he's reserving
22 that issue.

23 MR. FOX: Well, he's wearing
24 several hats and I understand he's got
25 some difficulties in that regard, but --

1 DELPHI CORPORATION 115

2 THE COURT: But nothing in this
3 settlement prevents anyone from arguing
4 that down the road.

5 MR. FOX: We could certainly, I
6 guess, make some argument vis-a-vis the
7 debtor Delphi Corp. that it has some
8 obligation to assert these claims against
9 the subsidiaries.

10 I would make one other point. I
11 think Mr. Butler's argument is a little
12 too facile, as well though, when he says
13 that the subsidiaries are merely doing a
14 benefit to Delphi Corp. by carrying out
15 the terms of Delphi Corp.'s agreement.
16 If they're not bound by this or parties
17 to this, then I don't why they're using
18 these, you know, union employees at too
19 high a price and why they're not just
20 going out and doing something different.
21 I mean, then it's a little disingenuous,
22 I think, to say they're not parties to
23 the agreement, they're not bound by it,
24 yet, they can't just go out and do what
25 they want.

1 DELPHI CORPORATION 116

2 THE COURT: Well, that's a good
3 question, but I, well, have to assume
4 that in all of the turmoil that
5 surrounded the labor issues, someone has
6 an answer to that that says they can't go
7 out and hire --

8 MR. FOX: I'm sure that's the case.
9 I'm sure that --

10 THE COURT: Ms. Ceccotti is
11 standing up to tell me why.

12 MR. FOX: And I think that Ms.
13 Ceccotti is going to jump up to say that.

14 MS. CECCOTTI: Well, I feel that
15 we're burdened today because nobody
16 apparently has in the courtroom a copy of
17 the collective bargaining agreement --

18 MR. FOX: No, we do. We do have
19 it. There is a copy.

20 MS. CECCOTTI: -- because if you
21 look in it you would see that the
22 agreement probably provides for certain
23 classes and class of employees wherever
24 they are in the system. I mean, this is
25 how agreements are set up. I've been

1 DELPHI CORPORATION 117

2 listening to this description and it's
3 extremely foreign to me because I know
4 how CBAs are set up. So, I don't think
5 that this is really a productive plan at
6 all.

7 MR. FOX: At my request the
8 agreement is here. And I don't
9 understand these things very well.

10 THE COURT: Well, at the minimum,
11 if the agreement said that GM was going
12 to assert its claim against the
13 subsidiaries that use UAW employees,
14 wouldn't the subsidiaries go right back
15 and assert that that's -- they should be
16 reimbursed for that by Delphi since
17 Delphi is the party on the collective
18 bargaining agreement and on the contracts
19 with GM?

20 MR. FOX: Yes. I'd be happy to be
21 involved in that discussion. But that
22 doesn't, I don't think, answer the point
23 today.

24 THE COURT: I guess that my
25 question is it doesn't seem to be a magic

1 DELPHI CORPORATION 118

2 fix. It's not an either or issue to me
3 to just say that we're going to shift it
4 to be asserted against the subsidiaries.
5 I don't see how that fixes it.

6 MR. FOX: Well, that, I think, from
7 the perspective of the significant
8 creditor of Delphi Corporation, that
9 certainly would help someone.

10 THE COURT: But leaving aside
11 whether anyone would agree to it since
12 Delphi Corporation is the party on the
13 agreements, even if someone did agree to
14 it doesn't Delphi Corporation have to
15 assume that it's going to get a claim
16 back from the subsidiaries?

17 MR. FOX: I'm not sure about that.
18 Particularly, if what Ms. Ceccotti
19 described is correct. I mean, as I
20 understand it, each subsidiary is paying
21 --

22 THE COURT: But it's liable, too.
23 It's a question of being liable. I just
24 --

25 MR. FOX: Well, if they're getting

3 flowbacks and all the benefits that this
4 agreement -- the attrition agreement
5 presumably provides then I don't know
6 what they'd have to complain about in
7 being part of --

8 THE COURT: Because Delphi's being
9 relieved of an enormous liability under
10 your formulation.

11 MR. FOX: But so, presumably, are
12 the subsidiaries. You can't separate
13 them. I mean, as Ms. Ceccotti said --

14 THE COURT: Well, but if that's the
15 case then it doesn't matter either way.

16 MR. FOX: No, it does. Because
17 you're putting all of GM's claim in one
18 particular entity.

19 THE COURT: But if the subsidiaries
20 are benefiting, too, --

21 MR. FOX: Yes.

22 THE COURT: -- and, therefore,
23 wouldn't have a basis of asserting the
24 claim against Delphi then Delphi, through
25 its equity interest in the subsidiaries,

1 DELPHI CORPORATION 120
2 is benefiting.

3 MR. FOX: If it has one.

4 THE COURT: But you just said that
5 they're benefiting.

6 MR. FOX: But they may be benefited
7 but still be insolvent. There are
8 creditors at every level. There are
9 schedules and statements that list
10 hundreds and hundreds of pages for some
11 of these entities of creditors and of
12 contracts, for instance, at particular
13 debtor entities, not Delphi Corp. And
14 they're presumably entering into
15 contracts, producing products, paying
16 these employees, --

17 THE COURT: All right. No, I
18 understand that point.

19 MR. FOX: And they have their own
20 creditors. And we have a structure.

21 THE COURT: They may benefit but
22 still not have any equity.

23 MR. FOX: That's right.

24 THE COURT: Okay.

25 MR. FOX: I think for this purpose,

1 DELPHI CORPORATION 121
2 Your Honor, that, really, the last point
3 I would make is simply the point that --
4 this notion that the debtor, without

5 coming back to the Court or only by
6 giving notice to the creditors'
7 committee, should be able to enter into
8 similar agreements with other unions.
9 Certainly, I have no objection to them
10 entering into pattern agreements, if you
11 will. But given the nature of this, the
12 difficulty in understanding this
13 particular and the affect it has on
14 various parties, I think it's only fair
15 that it be noticed to everybody and that
16 everybody have an opportunity to come
17 back and be heard before Your Honor as
18 each of these are approved.

19 THE COURT: Okay.

20 MR. FOX: If, in fact, at that
21 point -- you know, it may be perfunctory
22 even.

23 THE COURT: Well, it depends.

24 MR. FOX: Well, that's right.

25 THE COURT: I mean, it's hard for

1 DELPHI CORPORATION 122

2 me to imagine that each union has the
3 same relationship with GM and --

4 MR. FOX: Exactly, Your Honor.

5 Thank you, Your Honor.

6 THE COURT: It would be hard for me
7 to imagine that GM would have a problem
8 being able to assert a claim against more
9 debtors. Is that a problem for GM?

10 MR. KESSLER: We don't have a
11 problem asserting a claim against more
12 debtors.

13 THE COURT: Okay.

14 MR. KESSLER: We want to assert the
15 claim against Delphi Corporation.

16 THE COURT: All right.

17 MR. KESSLER: As the company
18 (indiscernible)

19 THE COURT: All right. But the
20 debtors must have a problem with that
21 being -- having an asserted claim against
22 more debtors, or not? I don't know.

23 MR. BUTLER: We do. We do, Your
24 Honor. I mean, we all understand when
25 anyone has a right to assert the same

1 DELPHI CORPORATION 123
2 claim against multiple debtors what that
3 does in a reorganization plan. It
4 creates more opportunity for them. If,
5 in fact, at the end of the day, and Mr.
6 Fox should presume that the people who

7 are responsible for Delphi Corporation or
8 fiduciary duties will do their duty. And
9 if, in fact, there is a legitimate inter-
10 company claim to be asserted in this
11 Chapter 11 case in connection with this,
12 it will be sorted out in connection with
13 the plan of reorganization. The plan's
14 not going to ignore those issues. I
15 don't think Mr. Fox would permit us to.
16 So, that issue will be sorted out in
17 connection with the plan in the claim's
18 administration process. However, I agree
19 with Your Honor. It is not so clear that
20 Mr. Fox's view is the correct view here.
21 And we'll sort it out at the end of the
22 day.

23 MR. FOX: Thank you, Your Honor.

24 THE COURT: Okay.

25 MR. KURTZ: Good afternoon, Your

1 DELPHI CORPORATION 124
2 Honor. Glenn Kurtz of White & Case on
3 behalf of Appalousa. Let me start with
4 some context here, Your Honor. This is a
5 very big deal. This attrition program
6 directly affects the rights and claims of
7 thousands of employees. It impacts all

8 of Delphi's U.S. operations and assets.
9 And it exposes Delphi to new claims by
10 its former parent GM for billions of
11 dollars potentially. This motion,
12 together with the 11.13 motions, may, in
13 fact, dictate the disposition of this
14 entire case. And even those motions are
15 not directly linked. So, rather than
16 addressing the matters critical of the
17 debtors reorganization in a comprehensive
18 fashion and after a careful, deliberate
19 review, this motion was made on an
20 expedited basis and has been a mere 16
21 days since the filing to this hearing.

22 THE COURT: Well, let me ask you a
23 question about that. It seems to me
24 that, as much as everyone wants to avoid
25 the fact, the workers here are facing

1 DELPHI CORPORATION 125
2 very painful choices. And what this
3 motion does by coming now is give them
4 more choices, whereas if it was done in
5 the context of an 1113, it may not mean
6 that much. I mean, I'm not so sure it
7 doesn't make sense actually to keep it
8 separate from the 1113.

9 MR. KURTZ: The problem that we
10 have in addition to how incredibly
11 expedited this is in light of the impact
12 it has is I think it sets the table and
13 it can't be changed on what the
14 reorganization will be. You are
15 committing under the attrition program to
16 take drastic steps which will, if
17 successful, effectively eliminate the
18 work force before you even know, for
19 instance, what will happen on those 1113
20 motions. Ask yourself what happens if
21 they are successful as projected in some
22 high rate and they don't have enough
23 employees to operate in the plants and
24 the plants aren't closed. And then where
25 are they? And we have just a number of

1 DELPHI CORPORATION 126
2 fundamental --

3 THE COURT: Well, doesn't the 1113
4 motion assume a level of attrition --

5 MR. KURTZ: The 1113 --

6 THE COURT: -- flowing from the
7 motion in front of me today?

8 MR. KURTZ: Well, it does. But it
9 hasn't been adjudicated and so, if it

10 turns out --

11 THE COURT: Well, no, I understand.

12 But they're not -- I don't think what
13 they're asking for assumes that -- in
14 fact, just the opposite. They're
15 assuming the majority of the plants close
16 and the like. They're not assuming full
17 employment.

18 MR. KURTZ: No, they're not, Your
19 Honor. But what they are purporting to
20 do is put together a program that they
21 hope and expect to resolve the employment
22 issues, at least with respect to numbers,
23 for the vast majority of the work force
24 coupled with an 1113 motion which they
25 hope will resolve most of their plant

1 DELPHI CORPORATION 127

2 issues and most of their flexibility
3 issues for their rules. And there will
4 be precious little to do in the case
5 which is why we think this should be
6 subject to a more comprehensive process
7 with more Chapter 11 protections than an
8 expedited motion.

9 And I'd note that the debtors have
10 never provided a reason, and nor are we

11 aware of any, for expedited treatment of
12 this motion given this significance. We
13 think it's a -- we understand, of course,
14 that it's a complicated matter but we
15 don't think it's appropriate for the
16 debtors to basically say trust us on
17 this. We are concerned that this is
18 affecting a creeping reorganization and
19 we are concerned, with the sort of
20 dominating role of GM in all of this,
21 especially given GM's historic
22 performance which led to the badly out-
23 of-market contracts in the first
24 instance, both in '99 and in 2003. And
25 we believe that GM has an awful lot of

1 DELPHI CORPORATION 128
2 control of the debtor in the process and
3 that by reason of the significance of the
4 attrition, coupled with the 11.13s, and
5 the role of GM and the significance that
6 GM is playing that is subject to a
7 heightened review. And that's under a
8 number of cases that we've cited
9 including, Your Honor, the -- I'm sorry -
10 - the CGE Shattock case, which is 254
11 B.R. 5. It's including under the New

12 Hampshire Electrical Cooperative, which
13 is 131 B.R. 249.

14 With that background, we basically
15 have five objections. I think two of
16 them are subsidive and three of them may
17 in fact be to the form of the agreement
18 or the form of the order, although I'm
19 not entirely clear about that for reasons
20 that I'm going to address.

21 The first issue that I'd like to
22 speak to is the decision to lock in
23 approximately three billion dollars in
24 OPEB liabilities. And this, obviously,
25 is one of the subsidive concerns that we

1 DELPHI CORPORATION 129
2 have. We view this as absolutely
3 critical to the program and the
4 fundamental problem that we have with it.
5 And I hope that this discussion sheds
6 some light on some of the questions that
7 you're asking of other counsel. As you
8 know, the collective bargaining agreement
9 will expire on October 2007 and there
10 will be no outstanding obligations to
11 provide OPEB benefits. And in the reply
12 papers, the debtors chide Appaloua for

13 raising the prospect that OPEB
14 liabilities may be eliminated in the next
15 collective bargaining agreement. Well,
16 what the debtors don't mention was that
17 their own 30(b)(6) witnesses have both
18 testified that they have an expectation.
19 That they will be successful in
20 eliminating or to bear minimum
21 substantially decreasing OPEB benefits in
22 the next collective bargaining agreements
23 and, Your Honor, that's Sheehan, page 66,
24 line 9 to 22; page 68, line 22 to page
25 69, line two. And then the Butler

1 DELPHI CORPORATION 130
2 deposition, page 132, lines 14 to 20.
3 The debtors further admit that the
4 industry trend is towards eliminating or
5 to bear minimum substantially reducing
6 OPEB benefits. Sheehan so testified,
7 page 55, line 14 to page 56, line 8.
8 Consequently, Delphi's competitors either
9 are not providing any OPEB benefits
10 whatsoever or providing substantially
11 less generous OPEB benefits. That's the
12 background.
13 Now comes the attrition program

14 which provides for the flow of 5,000
15 employees back to GM. And Your Honor
16 earlier had some questions about what the
17 differences would be and why isn't there
18 already a claim for that flowback under
19 the existing agreements. And we're
20 approaching this a little differently,
21 although we believe that some of the same
22 fundamental concerns that are being
23 expressed by creditors and the creditors'
24 committee arise really not out of the
25 language but out of the actual decision

1 DELPHI CORPORATION 131

2 to go forward on this basis.

3 Once those 5,000 employees flow
4 back and there is no right for them to
5 flow back other than under the attrition
6 program, the OPEB benefits will be
7 effectively vested forever as concerns
8 the debtors. At that time, GM will
9 actuarially determine the present value
10 of the future OPEB benefits and this
11 premium state which they exist right now
12 and charge the estate for those amounts.
13 So, what we have here is as the debtors
14 set out with an expectation to eliminate

15 their OPEB benefits in their entirety,
16 they enter into an attrition program that
17 effectively cements those benefits and
18 perpetuity with respect to what they hope
19 to be the vast majority of their work
20 force. In addition to vesting that three
21 billion dollar liability which should be
22 going away, there is the potential for a
23 great windfall to GM to the detriment of
24 Delphi's creditors and equity holders.
25 GM is not obligated to provide OPEB

1 DELPHI CORPORATION 132
2 benefits to the Delphi employees going
3 forward. That will be subject to the
4 next collective bargaining agreement.
5 We're getting a present actuarially
6 determined OPEB liability and,
7 incidentally, the debtors call it three
8 billion. The spreadsheet which is, I
9 think, Exhibit 14, page 24, reflects
10 something like 2.9 but it only goes
11 through 2010, so unless those OPEB
12 liabilities don't go beyond 2010, and
13 that's not reasonable, the number is
14 actually bigger. GM, though, can
15 eliminate or substantially reduce those

16 OPEB liabilities, yet give no relief back
17 to the debtors for having made those
18 payments on a present value basis based
19 on the flowbacks that will occur during
20 the short run in this bankruptcy. And
21 those amounts are substantial. We can
22 see no basis for choosing to trigger
23 those substantial liabilities at this
24 time. Liabilities that do not presently
25 exist and which may never exist.

1 DELPHI CORPORATION 133

2 And so the question that we think
3 the Court must ask is what is it that the
4 debtors are receiving in exchange for
5 that additional three billion dollars in
6 liability or at least up to three billion
7 dollars. And we think the answer is
8 very, very little. And if Your Honor
9 looks at Exhibit 14, page 24, which sets
10 forth the spreadsheet of the impact of
11 the attrition program as against the
12 steady state, you'll see two things. One
13 you will see is that the attrition
14 program will precipitate an additional
15 underfunded pension liability of up to
16 2.2 billion dollars. The other matter

17 that you will observe in the cash flow
18 comparison is that the attrition program
19 does not improve the financial condition
20 but, in fact, at least slightly impairs
21 it. You go from a steady state of
22 negative 8.9 billion, as calculated by
23 the debtors, to something slightly more
24 of 8.9 billion when you're using the
25 assumption that there's a hundred percent

1 DELPHI CORPORATION 134
2 acceptance of the program. The debtors
3 say that the way you demonstrated value
4 notwithstanding the fact that the
5 program, in fact, does not improve the
6 condition is that you add back the line
7 "GM OPEB Flowback for Check-the-box
8 Retirees" because GM is making those
9 payments in the first instance. And the
10 first instance is, in fact, the word that
11 Mr. Sheehan used at his deposition.
12 Consequently, it's a wash because GM will
13 make a claim back for those very same
14 amounts.

15 When I asked the company's 30(b)(6)
16 witness, Mr. Sheehan, about that, he
17 confirmed that it was a wash except he

18 said the type of consideration that would
19 be provided to GM in a reorganization
20 would be something different than cash.
21 It would be some other form of currency.
22 That testimony, Your Honor, is at pages
23 96, line 7 to page 97, line 3.

24 And we have three issues with that.
25 One is that does little or nothing for

1 DELPHI CORPORATION 135
2 the estate; trading one liability for
3 another doesn't help. Two, the debtors
4 certainly don't know what a plan of
5 reorganization will look like or the
6 currency that will be paid. This Court
7 itself has acknowledged that it's too
8 soon to determine for certain what anyone
9 will receive. And, consequently,
10 contrary to the implication by the
11 debtors that they need not concern
12 themselves with the size of the claim
13 because creditors will be impaired. For
14 all we know, GM will, in fact, receive a
15 full recovery on this new inflated claim
16 to the detriment of equity holders and
17 perhaps creditors.

18 The third concern we have, Your

19 Honor, is that we believe, given the
20 significance of the attrition program and
21 the attended 1113 motions and the fact
22 that that's core to the case and given
23 that the debtors' interest seems to be
24 driven, at least in part, if not
25 primarily, with the notion that the

1 DELPHI CORPORATION 136

2 consideration to be paid to GM in the
3 context of a reorganization will differ
4 from cash that this would constitute an
5 impermissible sub rosa plan or at least
6 would deny all the constituencies of the
7 benefits of a Chapter 11 plan process.

8 THE COURT: I don't follow that
9 one.

10 MR. KURTZ: Our concern, Your
11 Honor, in the case is like Lionel for the
12 2nd Circuit -- and the cases that have
13 come from that have sort of intermixed a
14 notion of having a heightened review of
15 363 applications and sub rosa plans. And
16 there is a whole host of issues that one
17 looks to --

18 THE COURT: How is this a sub rosa
19 plan?

20 MR. KURTZ: Our concern --

21 THE COURT: Because the debtor is
22 thinking that GM might get on account of
23 its unsecured claim here instruments that
24 are worth less than the cash that it's
25 getting up front?

1 DELPHI CORPORATION 137

2 MR. KURTZ: That's right. And we
3 think that --

4 THE COURT: All right. And that's
5 a plan why?

6 MR. KURTZ: Well, we believe that
7 whether you call it a sub rosa or just
8 has heightened scrutiny under the
9 applicable --

10 THE COURT: No, I want to know why
11 you said it was a plan.

12 MR. KURTZ: Because it's
13 effectively setting the table on a
14 reorganization. I view this as a
15 creeping reorganization.

16 THE COURT: How?

17 MR. KURTZ: Because this is a
18 heavily labor-intensive, been coined --
19 don't know if the term existed before
20 this case -- labor transformation case.

21 And the issues that are going to be
22 addressed in the attrition program and in
23 the 1113s will resolve by locking in the
24 liabilities nearly all of the labor
25 benefits as of today. You will lose most

1 DELPHI CORPORATION 138
2 of the work force from 30,000 down to six
3 to eight, if they're successful. You
4 will lose most of the plans, 21 out of
5 the 29 plans. And what you will have
6 left is the go forward collective
7 bargaining agreement. Those seem to me
8 to be primary assets and liabilities in
9 connection with this that are being
10 determined at the first instance in the
11 case without the protections of a
12 confirmation process. They are so core
13 in our view to the reorganization efforts
14 --

15 THE COURT: So, your view is that
16 any decision by the debtor that
17 fundamentally affects its business needs
18 to be voted on pursuant to a plan
19 process?

20 MR. KURTZ: No. We believe that
21 the case as Lionel included -- say -- and

22 the New Hampshire cases that I cited say
23 that the more fundamental the step is
24 towards a reorganization or towards the
25 assets and liabilities the more scrutiny

1 DELPHI CORPORATION 139
2 it deserves. And if you, Your Honor,
3 determine that this will effectively
4 resolve the lion's share of the
5 bankruptcy issues and set the table for
6 what the recoveries are likely to be
7 because we now know that the liabilities
8 are being locked in at what we view is an
9 elevated rate that that should not be
10 determined in a summary fashion.

11 THE COURT: Okay.

12 MR. KURTZ: In any event, we don't
13 see whether you consider it a sub rosa
14 plan or not how the ability to change the
15 currency on GM's claim can justify an
16 additional 5.2 billion dollars in
17 liabilities. And those new liabilities,
18 of course, will absorb what otherwise
19 might be available to equity holders and
20 --

21 THE COURT: I'm sorry. How did it
22 get to be 5.2 billion?

23 MR. KURTZ: I am also noting, Your
24 Honor, the 2.2 billion dollar additional
25 pension liability which is also reflected

1 DELPHI CORPORATION 140
2 on Exhibit 14, page 24. Or, I should say
3 up to 2.2 billion. It's less if the
4 acceptance rate on the attrition program,
5 if approved, is less than 100 percent.

6 And we appreciate the complexity of
7 the negotiation, but, Your Honor, this
8 new liability seems to us to be without
9 any concomitant assurances with respect
10 to the rest of the debtors' problems.
11 There is no new collective bargaining
12 agreement. There is no agreement on
13 plant closings. There is no guarantee
14 from GM to provide more work or maintain
15 a current level of work. There really is
16 only at this juncture a stand alone
17 attrition plan with the new liabilities.
18 And we're concerned about a piecemeal
19 approach to what is a global problem. I
20 asked before what happens if the
21 employees leave and the motion is denied.
22 I ask now why is the debtor assuming the
23 considerable liabilities at the parent

24 level. And I won't go into this because
25 Mr. Fox did an adequate job with it. But

1 DELPHI CORPORATION 141
2 instead of pushing them down to the
3 subsidiaries, which may be insolvent,
4 which enjoy the benefit of the employee
5 services. The debtors have no business
6 plan. So, we can't analyze how the
7 attrition program fits or doesn't fit
8 with the new business plan. The debtors
9 haven't analyzed the impact of the
10 program in connection with any later and
11 necessary steps of transformation so we
12 have no idea how it fits or doesn't fit
13 with the later steps of transformation.

14 Most significantly, and I really
15 think this is the most fundamental
16 economic part of this argument, Your
17 Honor, is we think the debtors are not
18 trying to affect any net restructuring
19 savings. Now, we know that Delphi's
20 wages and benefits are badly out of
21 market. The debtors themselves have
22 submitted declarations concluding that
23 the wages and benefits are some 300 to
24 400 percent above market. We also know,

25 because there's no dispute, that these

1 DELPHI CORPORATION 142
2 badly out of market CBAs are going to
3 expire in October in 2007. So we see
4 ample opportunity for restructuring
5 savings. The debtors' plan does not
6 affect any net savings. The debtors'
7 analysis shows, and we just looked, that
8 the liabilities are effectively
9 identical, in fact slightly higher, when
10 you implement the human hourly attrition
11 program at a hundred percent. All the
12 debtors are doing is they're moving the
13 liabilities from the unions -- their
14 liabilities, too -- from the unions to
15 GM. They are not advantaging themselves
16 of any ability to simply negotiate down
17 badly out of market contracts. Instead,
18 they're locking them in and simply
19 substituting the claim of union -- the
20 unions for GM. And we don't think that's
21 reasonable. And we think it's too early
22 to determine to do nothing to decrease
23 the wages and benefits structure in light
24 of what should be a fairly reasonable
25 position in a negotiation.

1 DELPHI CORPORATION 143

2 I'd also note, as a timing matter,
3 that the program may be case dispositive
4 and there's not even an equity committee
5 yet. And the debtors are effectively
6 proceeding on the basis that they are
7 hopelessly insolvent and, therefore, they
8 don't really care about the claims that
9 go to GM. So long as they're addressed
10 with plan currency, they will be free to
11 avail themselves of a lower labor
12 structure, wage structure, when they
13 emerge. But we think that's premature,
14 particularly, in light of Your Honor's
15 determination on our equity committee
16 motion and we think more significantly
17 that it's going to be a self-fulfilling
18 prophesy. If you simply lock in
19 liabilities that we think should go away
20 or be reduced substantially that you will
21 realize your proclamations about
22 solvency.

23 THE COURT: Whose proclamations
24 about solvency?

25 MR. KURTZ: The debtors'

1 DELPHI CORPORATION 144
2 proclamations about solvency where they
3 had said --

4 THE COURT: 'Cause you said 'your.'
5 I just want to make sure who you were
6 talking about.

7 MR. KURTZ: No, no, no. No, Your
8 Honor. I'm sorry. I meant taking it
9 from the standpoint of the debtors if
10 they take this action, they will self-
11 fulfill their prophesies.

12 That is the sum and substance of
13 the first and most primary objection and
14 I'm sure you'd be happy to know --

15 THE COURT: That was just the first
16 objection?

17 MR. KURTZ: But you'll be happy to
18 know --

19 THE COURT: You have ten minutes.

20 MR. KURTZ: -- that the remaining
21 objections are fairly quick. That was
22 the one --

23 THE COURT: They will be.

24 MR. KURTZ: -- that I thought --
25 yeah. They may be even quicker.

1 DELPHI CORPORATION 145

2 THE COURT: Yeah. Ten minutes.

3 MR. KURTZ: Your Honor, the second
4 issue we have, very quickly, is when I
5 deposed the debtors' 30(b)(6) witnesses
6 they seemed to believe that the 35,000
7 dollar lump sum payments under what I
8 think was paragraph 1(a) of the attrition
9 program would give rise to a claim by GM.
10 GM put it in reply papers in which they
11 said in page 4, paragraph 4 that, quote,
12 GM will receive no claim on account of
13 the 35,000 dollar lump sum payment. That
14 ought to be made clear. It didn't appear
15 to be clear in the document and it didn't
16 appear to be clear from the deposition
17 testimony.

18 THE COURT: Okay.

19 MR. KURTZ: The next sort of
20 procedural issue, Your Honor, is with
21 respect to paragraph of 1(e) of the
22 attrition program which provides for a
23 buyout by GM of 140,000 dollars for
24 workers with more than ten years of
25 tenure and 70,000 thousand dollars for

1 DELPHI CORPORATION 146

2 workers with less than ten years of
3 tenure. Our concern, again, may simply
4 be one of form. Am I revealing anything
5 I shouldn't be revealing?

6 MR. BUTLER: No, I just wanted to
7 get up and say that agreement 1(a),
8 paragraph 1 is in its entirety an
9 agreement between GM and the UAW on GM's
10 attrition program.

11 MR. KURTZ: Okay. I'm getting to
12 that. This is my confusion. Both Mr.
13 Sheehan and Mr. Butler, the 30(b)(6)
14 witnesses testified that GM will have no
15 claim based on the amounts under
16 paragraph 1(e). I take it that Mr.
17 Butler's rising here is confirming that
18 we could not be certain from review of
19 the attrition program why somebody
20 couldn't flow back under paragraph 4 or
21 under paragraph 2 and then retire under
22 this incentive retirement program with
23 1(e). So, all we ask is that if that's
24 right, that Your Honor make clear that GM
25 has no claim at all arising out of any

1 DELPHI CORPORATION 147

2 payments it makes under paragraph 1(e) of
3 the attrition program. If for some
4 reason GM feels otherwise, I would like
5 to be heard on that because I don't think
6 the debtors otherwise consider what would
7 otherwise be I think a very large claim.

8 The next objection, Your Honor,
9 very, very quick, paragraph 7 -- I won't
10 beat what I hope to be a dead horse. It
11 started its life with language
12 "conclusively deemed to be comprehended
13 by." We were not sure if that meant it
14 was an allowed claim or an allowable
15 claim. There has been some effort to fix
16 that language. I think Your Honor
17 expressed some concerns to whether there
18 was an ambiguity as to whether there were
19 defenses including to allow ability like
20 subordination and any other available
21 defense. Both of Delhi's 30(b)(6)
22 witnesses have confirmed that the claim
23 was not to be allowed. It was simply
24 something they could assert. Both
25 witnesses confirmed that all

3 would be able to raise and fully preserve
4 all defenses, objections, setoffs and
5 claims they had with respect to that.
6 That's at Sheehan, page 93, line 7
7 through 12 and then Butler --

8 THE COURT: That's fine. You're
9 right. This is a dead horse.

10 MR. KURTZ: Okay. And then our
11 last point, Your Honor, is with respect
12 to the idea of entering into future
13 agreements without getting on noticing
14 without approval.

15 THE COURT: Right. I understand
16 that point.

17 MR. KURTZ: Okay. Thank you very
18 much.

19 THE COURT: Okay.

20 MR. ENKELS: Afternoon, Your Honor.
21 John Enkels from Brown Rudnick Berlack
22 Israels for Law Debenture Trust Company
23 in about two minutes. We filed our
24 limited objection two days late.
25 However, we note that because it

1 DELPHI CORPORATION 149
2 presented no new issues that it caused no
3 prejudice to any parties and we hope that

4 the Court will accept it as such.

5 THE COURT: Okay.

6 MR. ENKELS: Our limited objection
7 joined in the --

8 THE COURT: I got it.

9 MR. ENKELS: Okay.

10 THE COURT: You're saying me, too.

11 MR. ENKELS: Me, too. We joined in
12 the -- fine. The arguments of the
13 Wilmington Trust, put this in today and
14 then their papers.

15 THE COURT: You're still saying me,
16 too. I know you are. Okay.

17 MR. BUTLER: Your Honor, I just
18 want to be sure I put on the record that
19 I join the committee's objections.

20 THE COURT: Everyone joins -- no,
21 I'm kidding.

22 MR. BUTLER: Your Honor, we've been
23 at this for a couple hours. Could we
24 take five minutes at this point, or do
25 you want to keep going?

1 DELPHI CORPORATION 150

2 THE COURT: Well, I wanted to make
3 sure that you focus on whatever you can
4 in respect to quantifiable upfront

5 benefits in return for the concessions
6 that you're giving here. So, that's
7 really what I want to hear about.
8 Particularly, in respect of why the
9 debtors have decided that it makes sense
10 to lock in the OPEB when it's clearly a
11 fruitful area at least for negotiation in
12 the future. So, that's probably what
13 you're going to address anyway, but I'll
14 come back in five minutes.

15 MR. BUTLER: Thanks, Your Honor.

16 (Recess at 4:01 P.M.)

17 THE COURT: Please be seated.

18 MR. BUTLER: Thank you. I'm
19 mindful of the points of emphasis that
20 the Court has and I will address those.

21 THE COURT: Okay.

22 MR. BUTLER: I would also like --
23 just a couple of things I had promised
24 some stakeholders to mention on the
25 record and --

1 DELPHI CORPORATION 151

2 THE COURT: Oh sure. And you're
3 free to say anything. I just wanted
4 you to focus on this point.

5 MR. BUTLER: I will not miss that,

6 Your Honor.

7 THE COURT: All right.

8 MR. BUTLER: Your Honor, and it's
9 understandable, and so I don't say this
10 by way of criticism but by way of
11 observation because parties tend to focus
12 on the things that they're self-
13 interested about. But I sat here for
14 almost two and a half hours waiting for
15 someone to argue, even if they were
16 arguing against us, about business
17 judgment and about the agreement that is
18 before us and what the balancing of
19 issues ought to be. Because from the
20 debtors' perspective, Your Honor, this
21 agreement, while far from case
22 dispositive and why it is a baby step in
23 what is many steps we have to take down
24 the road, was and is to the debtors as
25 fiduciaries of this estate incredibly

1 DELPHI CORPORATION 152

2 important. This is a labor
3 transformation case. We've talked about
4 that before. It's at the fundamental
5 part of the core of this case.

6 But when I sat here before Your

7 Honor on the first day of this case and
8 we had the charts up and we talked about
9 North American, talked about the debtors
10 and the non-debtors and described the
11 challenges that faced us last October and
12 that would face us over the sort of 18
13 month trek that we envisioned would occur
14 going into next year. We talked about
15 the people. And you can't be at this
16 business very long and not understand
17 that if you're going to transform a
18 business and labor is at the center of
19 that transformation that you can't
20 address the needs of the people.

21 Now, the reality is how ever Delphi
22 approaches these matters, and I'm going
23 to be very circumspect in what I say
24 today because depending on the
25 constituency and stakeholder, nothing I

1 DELPHI CORPORATION 153
2 say here can be perfectly acceptable, but
3 the reality is Delphi had a business
4 judgment to make, Your Honor. And that
5 business judgment was in light of this
6 transformation path that we're on, which
7 the debtors believe is our only road to a

8 reorganization here, the question is do
9 you tell the people that they have
10 options and alternatives and exit
11 strategies and possibilities for what is
12 euphemistically called a soft landing.
13 Or, do you simply tell them we have
14 nothing for you until the end of the
15 process. And while GM has expressed
16 publicly that they're disappointed in our
17 filings last week and the UAW has
18 chastised us for those filings, the
19 debtors have nevertheless embarked on a
20 dual path that they believe is necessary
21 to complete this reorganization and
22 maximize value. And we believed that
23 before we began that process, it was
24 important if we could to talk to the
25 people and to tell them that we cared

1 DELPHI CORPORATION 154
2 about the soft landings and that we would
3 provide them for that. The UAW thought
4 that was important and GM, not because
5 they're altruistic but because as this
6 agreement says and it's a tri-party
7 agreement, GM got something from the
8 union, too, and it's disclosed to this

9 Court. There are no secrets here. This
10 is a transparent agreement. GM got a
11 separate program, as well, that they
12 wanted.

13 But I think it is important and I
14 hope the Court won't dismiss lightly the
15 fact that this represents a collectively
16 bargained agreement, a consensual
17 agreement, between the UAW, General
18 Motors and Delphi on the first step of
19 transformation.

20 In terms of process, and I simply
21 want to talk about that one aspect of
22 business judgment is the process that you
23 use. I do want to point just out
24 briefly, Your Honor, a couple of exhibits
25 that have been admitted into evidence.

1 DELPHI CORPORATION 155
2 Exhibit #9, I think, is important
3 because, and I won't go through it in
4 great detail, but Exhibit #9, which is
5 dated March 13, is a presentation that
6 was made to the official committee of
7 unsecured creditors that convened a
8 special teleconference with the debtors
9 for the entire committee to get a

10 presentation by Mr. Butler, Mr. Kevin
11 Butler, about what was being considered.
12 The discussions on soft landing, the hard
13 bargaining discussions, began the weekend
14 prior to March 13th, continued 24/7 until
15 the morning of March 22nd at which time
16 the tri-party agreement was announced.
17 And before we got through the last ten
18 days of that, and while people were
19 working 24/7, we took time out on March
20 13th to make this presentation to the
21 creditors' committee. The same day this
22 presentation was made internally to
23 management. The same information, the
24 same day. And when you walk through
25 this, Your Honor, you'll note that the

1 DELPHI CORPORATION 156
2 company evaluated many, many terms and
3 issues in terms of financial issues,
4 possible take rates, retirement
5 assumptions, how this would compare
6 against the models the company is
7 considering both in terms of its steady
8 state run rate and in terms of a possible
9 transformation plan. And a payback
10 analysis from the company's perspective

11 on how these things would be dealt with
12 and various conclusions to the committee
13 on March 13th.

14 The same thing was then discussed
15 on a preliminary basis and we talked to
16 the committee before we talked to our own
17 board. And Exhibits 10 gives you a sense
18 of the preliminary presentation that was
19 made to the board of directors on March
20 14th, still more than a week before the
21 agreement was actually completed. And
22 then you have at Exhibits 11, 12 and 13
23 the analysis of what was presented to the
24 board and the creditors' committee in
25 connection with the ultimate agreement.

1 DELPHI CORPORATION 157

2 In addition, I shared aspects, the
3 predecessor of the drafts of what
4 originally was paragraph 5 but paragraph
5 7 of the agreement, with counsel to the
6 committee and got their input in the
7 middle of the negotiations to understand
8 what their concerns were. I'm not
9 suggesting we addressed every concern of
10 the committee. Obviously, we have not.
11 But from a process perspective, Your

12 Honor, we conducted the appropriate
13 process, we consulted, we made
14 presentations to the full committee well
15 in advance of agreeing to anything. And
16 we got feedback which we considered and
17 evaluated and which guided, but did not
18 direct, our action and our conduct.

19 The next point. We indicated, and
20 I do need to say this on the record, we
21 indicated in our pleadings that the
22 agreement that we entered into, including
23 the segregated account would require the
24 support of our DIP lenders. And I simply
25 want to report to Your Honor that we have

1 DELPHI CORPORATION 158
2 reached agreement with the administrative
3 agent with respect to an amendment that
4 was already being worked on for a
5 covenant relief because we're going to be
6 filing our 10Ks we publicly disclosed
7 later than had been originally planned.
8 We got some covenant waivers from the DIP
9 lenders and we did pay them an overall
10 amendment fee of a million dollars for
11 that but they added to that a waiver for
12 this program. So, we're appreciative of

13 that, appreciative of the steps they took
14 to support us and so there's no issue
15 here with a DIP agreement. We did point
16 that out in the motion and I wanted Your
17 Honor to be aware of it.

18 In terms of quantifiable benefits
19 and in terms of why one would do this,
20 I'd like to actually walk through this
21 agreement with Your Honor very briefly.
22 It's only five pages long and it's
23 Exhibit 1. And just sort of talk about
24 the construction of this agreement and
25 what was important to the company.

1 DELPHI CORPORATION 159

2 First of all, paragraphs 1 and 2
3 are agreements between General Motors and
4 UAW and I'm not going to talk about
5 those.

6 THE COURT: Well, can we confirm in
7 the order that GM will not assert a claim
8 under those two paragraphs?

9 MR. BUTLER: I'll leave that to --
10 those are GM agreements. I assume GM has
11 no problem with that.

12 THE COURT: A claim against the
13 debtors, obviously. Okay.

14 MR. BUTLER: Your Honor, with
15 respect to paragraph 3 in terms of the
16 attrition program, the 35,000 dollars for
17 normal early retirements and for the
18 mutually satisfactory retirements, that
19 incentive which is quantified as
20 approximately more or less 300 million
21 dollars is an undertaking that we're
22 paying but General Motors has agreed to
23 fund. And there is no provision in this
24 agreement for General Motors to get a
25 nickel back from the debtors or to be

1 DELPHI CORPORATION 160
2 able to assert a claim. Now, having said
3 that, Your Honor, I will tell you that
4 General Motors is going to put that on
5 the score card for the final negotiation
6 and they're going to expect our final
7 agreements with them will comprehend
8 that. But they don't have -- if we never
9 get to a final agreement and how that's
10 ultimately sorted out in the final
11 agreement is for another day, but if we
12 never get there, they're on the hook for
13 the 300 million dollars and that is a
14 entirely new undertaking that they have

15 done on our behalf.

16 The next section of paragraph 3
17 talks about what happens, and this was
18 important to every party, but,
19 particularly, to the union, in dealing
20 with what happened with people who were
21 close to retirement but not quite there.
22 And the 27 to 30 provisions -- we created
23 a special voluntary placement program and
24 a pre-retirement program under the terms
25 described, and I'm not going to go

1 DELPHI CORPORATION 161
2 through each of them, but it essentially
3 provides that people can grow into
4 retirement. All right? Now, the comment
5 was made, and I'll just point out to you
6 at the bottom of page 3 on 3(c), that the
7 program we're talking about here is going
8 to be offered on a nationwide basis
9 immediately, but I do point out to you
10 the important sentence that this
11 addresses Appaloussa's concerns, I think,
12 "the application period timing of
13 retirements release dates and number of
14 sign-up dates will be determined jointly
15 by Delphi and the UAW and those dates may

16 vary by location."

17 This is rolled out, Your Honor, a
18 plant by plant basis and you roll it out
19 trying to assess the take rates and
20 trying to make sure that you have the
21 necessary workers to be able to operate
22 your businesses and there are provisions
23 in this agreement in which there is an
24 agreement between the parties to
25 cooperate with each other with respect to

1 DELPHI CORPORATION 162
2 temporary workers. And that's in another
3 provision of the agreement.

4 All right? And the payment of this
5 obligation, paying the monthly wages for
6 the special retirement program, that's on
7 the account of the debtors. The debtors
8 are paying that. That's where the 75
9 million dollar segregated account came
10 into play, which the DIP lenders have now
11 agreed to, and which we wanted to be able
12 to demonstrate was not subject to 11.13
13 attack.

14 THE COURT: Okay. I just have a
15 small point on that. In the order, it
16 appears that even if that 75 million is

17 not spent, it has to stay in that
18 account? You may just want to look at
19 the order to see if -- I'm assuming that
20 if it's not spent for the purposes
21 provided in this agreement, it can come
22 out and be used in general funds.

23 MR. BUTLER: Yes, Your Honor. It
24 can be. In fact, under this agreement,
25 there's an adjustment, once we know what

1 DELPHI CORPORATION 163
2 the take rate is, there's an adjustment
3 that we get to do this. And we talked
4 about whether we would -- how that
5 adjustment would occur and we've agreed
6 the 75 million dollars goes in initially
7 and then it's adjusted back after we know
8 exactly what the amounts are. And we, in
9 fact, are able to reimburse ourselves
10 from that account as we make payments.

11 THE COURT: Okay.

12 MR. BUTLER: So that account, that
13 75 million is not going to hang out there
14 for a long period of time. It will hang
15 out there until we are able to assess the
16 program, understand the take rate, make
17 sure people signed up, then we get to

18 adjust it, then we get to draw it down as
19 we make the payments to people over the
20 period of the pre-retirement program.
21 All right. And that, particularly, is
22 for our account.

23 Paragraph 4 is in our view, and
24 I'll talk about a couple of others, but I
25 want to paragraph 4 briefly. Paragraph 4

1 DELPHI CORPORATION 164
2 is the sort of check-the-box arrangement.
3 And the check-the-box arrangement which
4 allows an employee to go back and flow
5 back to GM and retire under the U.S.
6 Employee Matters Agreement with respect
7 to this act is another opportunity that
8 did not exist. And this is a new
9 opportunity to encourage -- give people a
10 menu of options. Because, candidly,
11 these workers who make their wages that
12 they make and without characterizing
13 those wages, they make these wages, if
14 they retire early, they have the
15 opportunity now to retire on either
16 Delphi's balance sheet or General Motor's
17 balance sheet, in terms of what they
18 want, how they want to evaluate what

19 their retirement would be. That was an
20 option. That was a collectively
21 bargained opportunity for the work force.
22 And that is -- I should also point out
23 and I didn't talk about it in detail, is
24 I should go back to paragraph 2, because
25 paragraph 2 is an agreement between GM

1 DELPHI CORPORATION 165
2 and UAW, but the direct beneficiary of
3 that is Delphi. And this is in the
4 context as I understand it, and I've come
5 to learn a little about this in recent
6 months, is, I believe, is appropriately
7 characterized as a sort of historic
8 commitment by General Motors as it
9 relates to flowbacks. Because here they
10 commit to 5,000 Delphi flowbacks. That's
11 not what the pre-petition flowback
12 agreement talks about. It talks about
13 opportunities. It has a rigid formula
14 for how people can be considered. This
15 was an arrangement where there was a
16 commitment that by September 1, 2007, GM
17 would do what's necessary in their work
18 force to create 5,000 spots for our
19 employees so people could flow back and

20 go back to work for General Motors. And
21 that's a commitment. And it can only be
22 extended -- the target date for
23 implementing that can only be extended
24 beyond the end of next year with Delphi's
25 consent. Again, collectively bargained a

1 DELPHI CORPORATION 166
2 hard driven bargain. And that is a very
3 important, another very important option,
4 and that's going to cost -- General
5 Motors tells us nearly 300 million
6 dollars for them to create the space at
7 General Motors because they've got to
8 clear people out to take these Delphi
9 employees. It's for our benefit, it
10 reduces our work force and, remember,
11 this entire program, Your Honor, is
12 voluntary. That's another important
13 element of this people have to
14 understand. No Delphi employee can be
15 forced to do any of this but this creates
16 a menu of options and opportunities for a
17 work force going through transformation.
18 And this gives at least a number of
19 employees, a group of employees, the
20 ability to go back and continue to work

21 for General Motors and a commitment that
22 General Motors will make the space
23 available to them.

24 That flowback obligation, the 300
25 million dollars at a hundred percent take

1 DELPHI CORPORATION 167
2 rate more or less with respect to the
3 early retirement -- or, the retirement
4 incentives. And the paragraph 4 check-
5 the-box opportunity for people to go back
6 and retire on General Motor's balance
7 sheet, if they chose to, are all
8 obligations that General Motors did not
9 have prior to signing their name to this
10 agreement. Each of them provides
11 extraordinarily important incentives and
12 opportunities for the debtors' employees.

13 And for that, what does General
14 Motors get? Do they get an
15 administrative claim which is what they
16 first demanded? The answer is no. They
17 get zero administrative claim. Do they
18 get any kind of claim for the 300 million
19 dollars that they're going to spend on
20 the retirement incentives? The answer is
21 no. Do they get any claim for clearing

22 their own house out in order to take
23 5,000 flowbacks? The answer is no. But
24 for the paragraph 4 check-the-box and for
25 the funding of active health care --

1 DELPHI CORPORATION 168
2 where that's necessary is described, I
3 think, somewhere in paragraph 7 -- for
4 those obligations, do they get an
5 administrative claim which is new? The
6 answer is no. Do they get a priority
7 claim? The answer is no. Do they get an
8 allowed pre-petition claim which they
9 insisted on? The answer is no. What do
10 they get? They get the right to assert a
11 claim subject to just a few people in
12 this room objecting to it.

13 And why are there different
14 channels? The creditors' committee's
15 major argument here is the debtors could
16 not possibly have exercised reasonable
17 business judgment in providing the soft
18 landing opportunities for their employees
19 in this labor transformation case because
20 we agreed that General Motors could have
21 the right to assert claims in various
22 channels. It's what I call the sort of

23 the channel argument. There are three
24 channels here. You can do it under the
25 Master Separation Agreement, you can do

1 DELPHI CORPORATION 169
2 it under the U.S. Employee Matters
3 Agreement, you can do it under what we
4 call the covenant agreement which is
5 really the indemnity agreements tied with
6 the benefit guarantee.

7 General Motors said they wanted the
8 opportunity to assert those claims under
9 all those channels. That was, by the
10 way, after we refused to give General
11 Motors a much simpler way of doing this.
12 We could have simply said, GM, for these
13 new obligations, you get an
14 administrative claim knocked down to a
15 pre-petition claim which we won't allow
16 but it will just be a pre-petition claim
17 under a separate agreement, under this
18 agreement, pre-petition claim. Which
19 would have given them a clean sailing
20 towards getting the claim allowed. And
21 we said no. We said, if you're going to
22 assert a claim for all these things,
23 you're going to agree that you're going

24 to use one of the pre-existing channels.

25 And, by the way, as you know, everybody

1 DELPHI CORPORATION 170
2 thinks they have, including the debtors,
3 think they may have defenses, both
4 affirmative and otherwise in each of
5 these channels. And General Motors said
6 to us, we got it, we understand that.
7 And, oh, by the way, if that's the case,
8 then we want the ability, because at one
9 point we were talking about having them
10 elect how to -- which channel to pick.
11 They basically said, we want the ability
12 to argue these channels in the
13 alternative because we understand from a
14 leverage perspective that creditors and
15 equity holders of the estate, and perhaps
16 even Delphi itself, is going to assert
17 that we can't get paid for these things
18 under these various agreements.

19 And the only thing we agreed to was
20 that they had the right to assert. Not
21 to receive, not to have an allowed claim
22 -- the right to assert, and that we could
23 not and the order would provide that
24 nobody could argue about the fact that

25 these claims could be asserted under

1 DELPHI CORPORATION 171

2 those. All the other things, equitable
3 subordination which was raised earlier,
4 other kinds of defenses, other kinds of -
5 - all of those exist. All of those can
6 be asserted.

7 THE COURT: Do the debtors
8 acknowledge that the U.S. Employee
9 Matters Agreement might have applied here
10 in any event? Or, is that -- do they
11 agree with the creditors' committee that
12 that's a stretch?

13 MR. BUTLER: Your Honor, it could
14 apply only if General Motors would have
15 agreed to take people under it pursuant
16 to the terms of that agreement. That
17 agreement doesn't include a commitment to
18 take 5,000 people between now and the end
19 of the next -- or, the third quarter of
20 next year. Okay? And so that is a new
21 commitment but they want to govern it and
22 I would just point out --

23 THE COURT: Would there be
24 indemnification agreement applied to that
25 new commitment either? Or, is there the

1 DELPHI CORPORATION 172

2 same problem with that, too? You need
3 some new agreement, in essence, to apply
4 to the new commitment?

5 MR. BUTLER: Well, that's, I think,
6 a theoretical position, Your Honor,
7 because I believe that you can take what
8 would otherwise be an administrative -- I
9 agree with the Court. You can take what
10 would otherwise be an administrative
11 claim and knock it down however you want
12 to. And I view -- the difference between
13 the committee and us -- and the debtors
14 is that we view forcing this pre-petition
15 assertable claim through existing
16 channels is limiting on General Motors,
17 not expanding General Motors' views.
18 Because it requires them to run the
19 wickets and the defenses of all the pre-
20 existing documents. They have to run, if
21 you will, the obstacle course with
22 respect to each of those channels. And
23 they simply said to us, we're not sure
24 which obstacles are higher in which
25 channels and so we want to run all the

1 DELPHI CORPORATION 173
2 channels. That was the consideration
3 that was given. We said, all right. No
4 administrative claim, no party claim, no
5 allowed pre-petition claim but you can
6 run the obstacle course however you want,
7 so long as you agree and the order is
8 clear that people can attack you on any
9 basis except they can't say the agreement
10 didn't comprehend it.

11 THE COURT: So, in your view,
12 because the flowback in 2 and the
13 flowback in 4 and the funding of health
14 costs in 7 are all new, there would be no
15 pre-existing agreement that would apply
16 absent your and GM's agreement that it
17 would apply.

18 MR. BUTLER: Right. And the
19 agreements we were talking about happened
20 to be just, importantly, agreements
21 between GM and Delphi.

22 THE COURT: That have their own
23 history and --

24 MR. BUTLER: Right.

25 THE COURT: Okay.

1 DELPHI CORPORATION 174

2 MR. BUTLER: And what we have said
3 is that you can assert it under those
4 agreements but you assert it -- and I
5 want to answer one question Your Honor
6 said is, do they have run the obstacle
7 course, as I call it. And the answer is
8 yes. They assert it subject to all of
9 the claims, defenses, anything people can
10 say -- they want to say under those
11 different channels except they can't say,
12 gee, this wasn't comprehended under the
13 pre-petition agreement. They can't say
14 that. Because otherwise if you did that,
15 then they'd have no claim -- that's the
16 same as saying they got nothing from the
17 outset. So, we're saying you can run the
18 obstacle course. We're making no
19 guarantees you get through it.

20 And why did the debtors do that,
21 Your Honor? We believe that we listened
22 very carefully to the concerns expressed
23 by the creditors' committee as our co-
24 fiduciary of the estate and they were
25 very concerned about claims allowance in

1 DELPHI CORPORATION 175
2 this case. They were very concerned
3 about claims, generally. And I
4 understand that Mr. Rosen -- these are my
5 words, not his -- may think we got 80
6 percent of the way there and for that,
7 congratulations, but he can help us get
8 the other 20 percent of the way there
9 because he can somehow talk you into
10 rewriting this agreement, but I don't
11 think it just works that way, Your Honor,
12 under the statute. And, by the way, just
13 because we got three-quarters of where we
14 wanted us to be doesn't mean that we
15 didn't, as an estate matter, exercise
16 reasonable business judgment as a legal
17 principle in determining that this was
18 appropriate under all the circumstances.
19 THE COURT: Okay. But what about
20 the argument that primarily Mr. Fox and
21 Mr. Kurtz made that one can see the
22 benefits to the employees of doing it
23 this way and because the debtor wants to
24 have reasonably happy employees --
25 although this is not a happy situation,

1 DELPHI CORPORATION 176

2 there's a benefit to the debtor of having
3 that extend to the employees, but that
4 ultimately in return for shedding
5 employees by giving employees the right
6 to opt out, you're getting costs in
7 return in the form of a GM claim that's
8 fixed at current OPEB levels?

9 MR. BUTLER: I have a couple of
10 responses to that, Your Honor. One,
11 you're right. The debtors would like to
12 have reasonably happy employees. This
13 agreement is not going to make our
14 employees happy. This agreement is
15 intended to try to help our employees
16 understand and make personal decisions
17 about their lives in a hopefully helpful
18 fashion that will, if we can, bring the
19 temperature down a little bit as we go
20 through this labor transformation.

21 THE COURT: Well, put it this way.
22 It's better for them certainly than what
23 Appalouosa is suggesting, which is that
24 you do it all at once and completely and
25 prevail on every point.

3 happen to think Appaloussa's argument is
4 one that simply says, let's just go
5 liquidate the company now because we'll
6 have no business. I mean, this concept,
7 and this just has to be said, this
8 concept -- we heard it again today --
9 that we magically, next September, all
10 OPEB responsibilities disappear.

11 THE COURT: No, I understand that.
12 But at the same time, in your
13 negotiations and in GM's separate
14 negotiations they are going to -- you and
15 they are going to be bargaining to reduce
16 OPEB obligations. I mean, I'm sure you
17 will.

18 MR. BUTLER: Well, Your Honor,
19 there's no question that we're going to
20 be involved in -- but understand from the
21 debtors' perspective what we think the
22 backdrop of that is. All right? We
23 believe the backdrop of that is a GM
24 benefits guarantee and they believe the
25 backdrop of that is an indemnity

1 DELPHI CORPORATION 178
2 agreement. And the reason that some of
3 the testimony you heard repeated to you

4 in the deposition transcripts is that the
5 company believes some of this is a wash
6 is because absent somebody being able to
7 -- whether it's the debtors or the
8 creditors' committee or someone else --
9 being able to establish equitable
10 subordination or some other fraudulent
11 transfer for some other theory which
12 everybody argues about in these cases and
13 very few cases actually result in a
14 judgment for.

15 THE COURT: 'Cause people often
16 settle those issues.

17 MR. BUTLER: Because people
18 generally settle. All I'm saying is
19 absent that, Your Honor --

20 THE COURT: The point is that you
21 and GM are stuck with each other absent
22 that.

23 MR. BUTLER: No, not just us. The
24 estate is.

25 THE COURT: Well, that's what I

1 DELPHI CORPORATION 179

2 mean.

3 MR. BUTLER: These claims exist.

4 Okay? If we terminate OPEB -- if we win

5 1114 and terminate OPEB, I don't think
6 the UAW intends, no matter who
7 subordinates anyone's mouth right now,
8 but I don't think the UAW intends to tell
9 their members that they aren't going to
10 get any OPEB benefits. That they're out
11 of luck. I think they're going to say,
12 we're going to get our benefits from
13 General Motors. And General Motors is
14 going to say, we may have to write this
15 check now, but guess what, Delphi? We're
16 going to assert the claim against you.

17 THE COURT: But what about the fact
18 of the expiry date of the agreements?

19 MR. BUTLER: That's right, Your
20 Honor. It's absolutely true in a year
21 and three months from now, or whatever it
22 is, five months from now, these
23 agreements expire on their terms. And to
24 that I have to tell you in the context of
25 a sophisticated labor case, really, I

1 DELPHI CORPORATION 180
2 have to say, so what? What does that
3 mean? That means, the next day that the
4 obligations disappear? It means the work
5 force vaporizes? It means that, again,

6 I'm speaking hypothetically now, but the
7 labor unions in this country are going to
8 allow General Motors and Delphi to
9 operate the next day without
10 comprehending these liabilities or that
11 have not been collectively bargained away
12 or dealt with under 1114 or some other
13 way? I mean, the reality of this is that
14 these obligations exist in this
15 particular situation. Some of the
16 obligations round trip, so that even if
17 we use 11.14 they come back to us. All
18 right? Under the pre-existing agreements
19 here unless those agreements can be set
20 aside or subordinated or attacked. All
21 right? And ultimately, I believe -- I
22 think everybody in this room believes,
23 Your Honor. Ultimately, that will be
24 settled out and I understand, everybody
25 has to look at the worse case and the

1 DELPHI CORPORATION 181
2 downside. And I would argue that an
3 underpinning of the debtors' business
4 judgment here, which I think the Court
5 needs to evaluate, is what happens if
6 this agreement's turned down? What

7 happened if this agreement was never
8 entered into or Your Honor tells us we
9 can't implement it? And I'm not going to
10 talk about, as everyone has, about these
11 parade of horrors that -- and talk
12 about the worse case, but let's talk
13 about downside for just a minute.

14 Downside #1 is I couldn't disagree
15 more with the creditors' committee on the
16 concept that is, hey, Judge, don't worry
17 about it. Just reject it, turn it away
18 and no worries here. The UAW and General
19 Motors and Delphi, they'll go down the
20 hallway -- this is so important, they'll
21 figure out another solution. That
22 doesn't happen in labor transformation
23 cases very often. There are a lot of
24 factors that coalesce that give you the
25 opportunity at certain windows in time to

1 DELPHI CORPORATION 182
2 reach certain agreements. And I am not
3 at all confident, Your Honor, that this
4 same agreement could be struck again. Or
5 that the creditors' committee desire to
6 rewrite the agreement which is not
7 permitted under the law.

8 THE COURT: When you entered into
9 this, obviously subject to Bankruptcy
10 Court approval, did GM know that you were
11 going to plan to reject their supply
12 agreements?

13 MR. BUTLER: They had a sense that
14 we might. They didn't know it for sure.
15 We certainly had talked to them as we
16 talked to the committee about the
17 possibility of seeking to deal with their
18 issues because the reason we filed a
19 motion, along with 1113/1114, Your
20 Honor, is there is a parity here and a
21 symmetry of issues that we have to
22 address to solve the problems.

23 THE COURT: Okay.

24 MR. BUTLER: It's not just about
25 labor. So, Your Honor --

1 DELPHI CORPORATION 183

2 THE COURT: Is it fair to say that
3 if I sent you down the hall, people might
4 start talking about those motions in
5 connection with this motion?

6 MR. BUTLER: I don't know what
7 people will talk about, Your Honor.
8 Right now, there are people that are

9 talking and people that are not talking.
10 And I'm not going to characterize anybody
11 on anything. I will tell you this is a
12 difficult but necessary moment in the
13 life of this reorganization and I really
14 do believe under 363(b) and I hope the
15 Court appreciates that it is -- this is
16 an overall business judgment level. And
17 I don't agree here -- and the reason that
18 there's nothing in the record that -- and
19 people weren't, I think, able to sort of
20 push to this point is, I hear people say
21 the words but I don't think anybody has
22 been able to dispute our assessment that
23 we don't believe that there is a material
24 increase in liabilities here by entering
25 into this agreement.

1 DELPHI CORPORATION 184
2 THE COURT: Well, I mean, what the
3 committee has said, and others have
4 echoed it, is that by locking in the OPEB
5 and related paragraph 7 costs under the
6 Employee Agreement, you are increasing
7 the liabilities because basically people
8 assume, in one way or another, those
9 costs as a practical matter will go down.

10 But for terms of determining GM's claim
11 albeit it's an unsecured pre-petition
12 claim, if allowed, they'll be at the
13 higher levels, the current levels.

14 MR. BUTLER: But, Your Honor, there
15 are about four assumptions in that
16 conclusion which haven't been proven and
17 are not in the record. All right? I
18 mean, the reality is that under the
19 Employee Matters Agreement there is
20 nothing locked in. There is an algorithm
21 in that agreement, which depending upon
22 what health care trends are either works
23 in Delphi's benefit or GM's benefit.

24 THE COURT: But it's based on
25 current OPEB levels, right? It's not

1 DELPHI CORPORATION 185
2 based on what's renegotiated or
3 negotiated for the 2007 contract.

4 MR. BUTLER: But, Your Honor, we
5 can't sit here and try negotiating on
6 what's going to happen a year and a half
7 or two years from now.

8 THE COURT: Well, I understand
9 that.

10 MR. BUTLER: And, in fact, the

11 claims that round trip under the various
12 agreements aren't based on what happens
13 two years from now either. And, I mean,
14 to suggest that this reorganization is
15 not going to simply --

16 THE COURT: But they wouldn't -- as
17 I understand it, these are new claims
18 that people have the right to assert so
19 newly. So, those claims wouldn't exist
20 either. You'd be just stuck with the
21 people.

22 MR. BUTLER: Right. We'd be stuck
23 with where we are today. Paying the
24 rates we are now.

25 THE COURT: Right. Not that you're

1 DELPHI CORPORATION 186
2 stuck with them. They're valuable
3 workers but it's in the company's interest
4 to have a smaller work force.

5 MR. BUTLER: Right. And, Your
6 Honor, this agreement --

7 THE COURT: So you have different
8 claims if you -- as opposed to these
9 particular claims.

10 MR. BUTLER: Well, I happen to
11 think OPEB claims in some respects are

12 refundable if we -- if people actually
13 check the box and go back to General
14 Motors here, that is a lesser OPEB claim
15 from the people who stay here and if
16 we're successful on 1114 or otherwise
17 collectively bargain it, go back to
18 General Motors under the benefit
19 guarantee. It's not like -- it's a
20 reduction of that claim.

21 And, I think, Your Honor, one thing
22 I just wanted to mention, as well, here
23 in terms of benefits here. You've heard
24 a lot of the jobs bank and a lot about
25 the fact that we pay people to simply

1 DELPHI CORPORATION 187
2 come to work and not do anything because
3 we have nothing for them to do and we pay
4 them their regular wages. This program,
5 when implemented, the debtors believe
6 will, in this calendar year, have the
7 opportunity of eliminating the jobs bank.
8 Because people will pick, make a choice.

9 THE COURT: I imagine those people
10 would assume they're most at risk, so I
11 understand that.

12 MR. BUTLER: But that also saves

13 the estate a tremendous amount of money.

14 And that's another benefit here of this

15 program.

16 THE COURT: Okay.

17 MR. BUTLER: Your Honor, I think

18 that --

19 THE COURT: Well, can I ask you --

20 this is a smaller question but I forgot

21 to raise it with the objectors. The last

22 paragraph of this talks about the basic

23 benefits in prorating, and yet as I

24 understood one of the committee's

25 objections, prorating for the years of

1 DELPHI CORPORATION 188

2 service and the different entities.

3 Yeah, this is on the pension plan, 7(f).

4 They say that the debtors would be liable

5 for a hundred percent of the pension if -

6 - well, let me just read it. "Paragraph

7 7(f) of the program provides that an

8 employee retiring from GM under paragraph

9 1(b) with credited service under the

10 Delphi pension plan would be considered

11 eligible to retire under the Delphi plan

12 with eligibility for prorated pension

13 benefits. The extent of the debtors'

14 obligations arising from this provision
15 is unclear." I didn't understand why it
16 was unclear. I thought it was just
17 prorated.

18 MR. BUTLER: It is prorated as I
19 understand it, Your Honor. The point is
20 that -- and this is -- somebody talked
21 about -- I should make the point you
22 mentioned pension -- let me just address
23 pension. The amount of incremental
24 pension liability is measured by
25 termination value that are occurring here

1 DELPHI CORPORATION 189
2 that are not otherwise a timing issue
3 really have nothing to do with most of
4 the retirements here. They have to do
5 with the MSRs, the mutually satisfactory
6 retirements, which actually may increase,
7 depending on how many people take it,
8 could increase the termination by
9 something in the range of 100 to 150
10 million dollars, depending on take rates
11 it may be less than that. This 2.2
12 billion dollar number that Appaloussa
13 referred to is a timing issue. These
14 people all have vested benefits. And the

15 reality is that they're going to have the
16 opportunity ultimately at some point
17 under the steady state, they're going to
18 retire, too, at some point. This isn't a
19 new liability that's created out of full
20 cloth.

21 THE COURT: Okay. But I didn't --
22 so you disagree with this paragraph 33 of
23 the objection? I don't know if you have
24 it in front of you.

25 MR. BUTLER: I haven't looked at

1 DELPHI CORPORATION 190
2 that particular paragraph.

3 THE COURT: It suggests that -- you
4 could read this agreement. It's
5 suggesting that instead of being
6 prorated, Delphi would be responsible for
7 a hundred percent?

8 MR. BUTLER: I believe it's
9 prorated unless somebody tells me
10 differently. Okay. My understanding is
11 and I think the agreement says it's
12 prorated. The reality is we're
13 responsible for their use of service and
14 GM is responsible for GM's.

15 THE COURT: Okay.

16 MR. ROSENBERG: Your Honor, I will
17 accept Mr. Butler's statement that it's
18 prorated but when we asked the question
19 in writing and the response that we got
20 back was as stated in that brief and I
21 believe Mr. Sheehan's testimony in his
22 deposition --

23 THE COURT: But this -- I guess,
24 the record would supersede that.

25 MR. ROSENBERG: Okay.

1 DELPHI CORPORATION 191

2 THE COURT: Okay. I sort of
3 interrupted you but I think you were
4 winding up.

5 MR. BUTLER: Can I have one minute,
6 please, Your Honor?

7 THE COURT: Yeah.

8 MR. ROSENBERG: Apparently, it's
9 not so simple, Your Honor.

10 THE COURT: Okay.

11 MR. BUTLER: I mean, I think that
12 part's obvious. I'll say it. Your
13 Honor, if somebody is retiring today and
14 they check the box and flow back to GM
15 today and they retire today, all their
16 service was with Delphi. But if somebody

17 goes back and flows back under the 5,000

18 flowbacks and they have GM's service --

19 THE COURT: And then they retire

20 later --

21 MR. BUTLER: -- and then they

22 retire, it's prorated.

23 THE COURT: Okay.

24 MR. BUTLER: I mean, you wouldn't

25 -- obviously, if all their service is

1 DELPHI CORPORATION 192

2 with us, when they check the box, they

3 would be -- okay.

4 Your Honor, I want to address one

5 other point that -- just in closing here

6 and I think some of the other parties

7 want to speak and I know Your Honor

8 wanted to be done shortly. And that is,

9 the comment about the pattern agreements

10 with the other unions.

11 One of the things that was very

12 important to the debtors here and to the

13 unions is that while we negotiated this

14 agreement with UAW and that covers a

15 significant number of our workers, it

16 does not cover the workers with several

17 other unions. There's, depending on how

18 you count it, 8,000 plus workers this
19 does not cover. And we are in
20 discussions to deal with that issue now.
21 And we have a lot of workers who are
22 saying how come, why don't I have these
23 options, as well, and it was important in
24 our motion to make it very clear we
25 intend to provide this, as soon as we can

1 DELPHI CORPORATION 193

2 collectively bargain it, with everybody.

3 It is going to be a pattern agreement and

4 our view is just like we set up other

5 procedures with this Court, if it is --

6 as long as it is reasonably similar to

7 this, and we've agreed with the

8 creditors' committee they can review it,

9 to go through this same process again

10 over 30 days from now or at some other

11 point, we would argue, Your Honor, is --

12 shouldn't be necessary.

13 THE COURT: But let me ask you
14 about -- with the other unions, do you
15 have the same issues as regards to the
16 relationship with GM and the agreements
17 with GM? You don't, do you?

18 MR. BUTLER: We actually have

19 similar issues with them. They're not
20 the same. For example -- but there are
21 some things that are different. There
22 are no flowback opportunities for certain
23 of our unions. Okay? So that will be a
24 different issue.

25 THE COURT: It just seems to me,

1 DELPHI CORPORATION 194
2 though, that while the general notion, if
3 I approve this as far as the level of
4 buyouts is concerned, should give comfort
5 to both the debtor and the other unions
6 that the same logic will apply to them
7 given the significance of the issues with
8 GM. To the extent the agreements and the
9 relationships are different, it would
10 seem to me that you'd have to come back
11 because that's -- it's really a three-way
12 analysis as opposed to a two-way
13 analysis. And I don't see how you could
14 get around that.

15 MR. BUTLER: Well, that's the
16 Court's view. We certainly have to
17 respect it. Our point in this --

18 THE COURT: I mean, my hope is that
19 people would realize that unless

20 something is different, the same result
21 should pertain. Or, if it's clearer, in
22 respect to those agreements than it is
23 with this one, again, the same results
24 should obtain which is approval. But I
25 think it's -- without knowing the three

1 DELPHI CORPORATION 195
2 elements of the issues at stake, it's
3 hard for me to give sort of an advanced -
4 - I don't even know what "comparable
5 arrangements" would be because there may
6 be material differences, not in terms of
7 the arrangements but in terms of the
8 parties' rights before the arrangements
9 started.

10 MR. BUTLER: Well, Your Honor, if
11 that's the Court's view, could we bring
12 that on for -- get a hearing date from
13 Your Honor and bring it on for expedited
14 outside of an omnibus date? So the
15 unions can get some comfort out of that?

16 THE COURT: I assume you can. Just
17 go -- the case management order spells
18 that out on how to do that.

19 MR. BUTLER: Okay. Thank you, Your
20 Honor.

21 MR. PETERSON: Your Honor, Lowell
22 Peterson for the Steel Workers, one of
23 the other unions. I certainly don't want
24 to belabor the positions that have
25 already been articulated. We support the

1 DELPHI CORPORATION 196
2 motion. Some of the sort of labor law
3 arguments that have been made by the
4 objectors are from the other side of the
5 looking glass, but that's not really my
6 role here today. I would hope that Your
7 Honor would think again perhaps about
8 having a full board hearing with notice
9 and so forth with respect to a similar
10 attrition program with the other unions,
11 particularly, the Steel Workers. We
12 really have a me-too kind of agreement
13 that's very similar and, of course, we
14 are also much smaller. The dollar values
15 would be a lot smaller.

16 THE COURT: Well, see, I don't know
17 whether it's -- the record before me
18 doesn't show whether someone has a
19 literally a me-too agreement or whether
20 there are wrinkles in it. So, that's why
21 I have a hard time approving something in

22 advance. On the other hand, if I've
23 approved this in some form, and yours
24 follows it and you have a me-too
25 agreement, I don't think it's going to be

1 DELPHI CORPORATION 197

2 this long a hearing.

3 MR. PETERSON: That would certainly
4 be a relief and I'm certain that none of
5 the objectors have -- will come up with
6 new arguments. But I think if you take a
7 look at the record, in the 11.13
8 proceedings that everybody seems to be
9 referring to, you'll see that our
10 agreements are pretty similar.

11 THE COURT: Okay.

12 MR. PETERSON: But it certainly
13 would help to get an expedited process
14 and proceed from there. Thank you, Your
15 Honor.

16 MS. CECCOTTI: Your Honor, Babette
17 Ceccotti for the UAW. I will also be
18 brief. First, I do want to just state so
19 that the record is absolutely clear that
20 approval of the special attrition program
21 today is vitally important to the UAW and
22 in the circumstances of this case in

23 which we find ourselves and our
24 membership finds itself. The incentives
25 that are provided, the job opportunities

1 DELPHI CORPORATION 198
2 with GM and the other protections that
3 were able to be negotiated here represent
4 meaningful concrete options for people in
5 an atmosphere of enormous uncertainty.
6 We've had lots of discussion or
7 references to the 11.13 motion and I am
8 certainly not here to get into the
9 substance of any of that today. If it
10 sadly becomes necessary for us to do so,
11 we'll address it at the appropriate time.

12 But the point is that the picture
13 that is painted there is just horrible.
14 And in terms of what it could mean for
15 the workers, here we have an agreement
16 that was able to be reached to provide
17 people with an option and an opportunity
18 and should very much be considered by the
19 Court in that light.

20 We think that the agreement, the
21 fact that it's an agreement represents a
22 very constructive step in the parties'
23 efforts to address extremely challenging

24 and difficult issues and, again, I think
25 the fact that it is an agreement should

1 DELPHI CORPORATION 199
2 be viewed as a productive step here
3 considering really the fact that this is
4 the debtors -- the debtors call this a
5 labor transformation case. They get to
6 call it, they filed it that way, they've
7 been talking about it for months. We
8 didn't ask to be part of a labor
9 transformation case, frankly. We didn't
10 ask to go first. Right? The debtors
11 have said this is the case we have. You
12 guys are going first. We're targeting
13 these costs. Here's our timetable,
14 here's the motion. It's not time yet to
15 negotiate with the creditors' committee.
16 This is a -- I don't want to say -- I
17 don't mean to say understandable because
18 I think a lot of their arguments really
19 are, frankly, simplistic in doing a case
20 like this, but it's not time to deal with
21 their issues yet. When you have a case
22 like this, and I've -- this is just about
23 the most difficult I've seen easily in 20
24 years of doing this, and the debtor says,

25 labor is going first, you hope for an

1 DELPHI CORPORATION 200
2 agreement. You think an agreement is a
3 good thing. An agreement, I agree with
4 Mr. Butler, you take the time and the
5 place and what's available to you and if
6 you have a window you take the window.
7 It is, and I totally agree with Mr.
8 Butler's observation, as well, that to
9 simply say we can go down the hall or
10 wait or just allow the passage of time
11 and we'll have a different result that
12 perhaps maybe other stakeholders would
13 like simply isn't realistic. And isn't,
14 again -- given the context we find
15 ourselves in which is that the debtors
16 have said this is the way our case is
17 going to proceed. It is up to the
18 unions, it's incumbent on the unions to
19 deal with that and to deal with it
20 responsibly and we believe that the
21 agreement should be viewed as a
22 productive step in that effort.

23 I would also like to confirm Mr.
24 Butler's observation regarding the notion
25 that the OPEBs would simply disappear

1 DELPHI CORPORATION 201
2 that, yes, the UAW would certainly assert
3 the indemnity. They have a long and very
4 successful history in vigorously
5 defending OPEB retiree health obligations
6 so there shouldn't be any misapprehension
7 here that whether it's in an 11.14
8 context or in some other context that the
9 UAW would not be as vigorous and
10 defensive of those obligations as it has
11 in the past.

12 In closing, I'd just like to say
13 that it is our very strong view that the
14 agreement represents both a process, the
15 fact that it is an agreement and a result
16 in terms of the program that it offers to
17 the employees that are very good results
18 for this case and absolutely,
19 unquestionably in the best interest of
20 the estate.

21 THE COURT: Okay. Let me just hear
22 from --

23 MR. ROSENBERG: Oh, sorry.

24 MR. BIENENSTOCK: Good afternoon,
25 Your Honor. Martin Bienenstock from

1 DELPHI CORPORATION 202
2 Weil, Gotshal & Manges for General Motors
3 Corporation. I've tried to limit my
4 comments to two minutes. Number one, I
5 want to do this by example. Under the
6 benefit guarantee, General Motors has
7 guaranteed OPEB and pension. To trigger
8 the benefit guarantee, a couple of things
9 have to happen, one of which has not yet
10 happened, namely Delphi has not stopped
11 paying OPEB to its employees.

12 Therefore, under this current
13 agreement, General Motors has no
14 obligation to start paying OPEB to Delphi
15 employees. If they stopped paying OPEB
16 to all of them or reduced it to all of
17 them, then our benefit guarantee would be
18 triggered and then we would have an
19 indemnity claim against the estate for
20 whatever we become obligated to pay.

21 The reason I start with that is
22 very simple. We do have a claim, if they
23 wiped out OPEB or reduced it to everyone,
24 we do have a claim back against the
25 estate for everything we pick up.

1 DELPHI CORPORATION 203

2 Because of the way this is coming up
3 procedurally, we have to have a mechanism
4 for asserting that claim. Mr. Butler did
5 explain that we could have just been
6 given it under this agreement. Instead
7 the negotiated solution was we'll assert
8 it under the benefit guarantee and the
9 indemnity agreement among others, as if
10 the triggers had occurred.

11 There are many other examples, Your
12 Honor. But it's that simple. We have
13 the claims. Just the triggering events
14 necessary to assert them haven't all
15 occurred currently and there are
16 variations of that in the other
17 agreements.

18 Number two, from a sheerly economic
19 viewpoint, Your Honor, it's clear that if
20 there's a choice given between the debtor
21 having an administrative obligation for
22 all this program's obligations or a
23 general unsecured or no obligation, the
24 debtor and the committee would both
25 prefer no obligation. It's always nice

1 DELPHI CORPORATION 204

2 to get something for nothing. We
3 understand that.

4 But the debtor satisfied everything
5 it could possibly want by eliminating all
6 administrative expenses back to General
7 Motors under this program and the
8 committee, which theoretically is
9 supposed to represent all general
10 unsecured claim holders, has basically,
11 and as Your Honor has seen, GM is not
12 part of that and the committee believes
13 one way to up the return to some
14 unsecured pre-petition claim holders is
15 to eliminate others such as General
16 Motors.

17 We're not here now to argue that
18 but I only raise it to make one point.
19 That agenda of the committee, whether
20 it's right, wrong or indifferent, is not
21 a reason not to approve this agreement.

22 This agreement makes the debtor's
23 estate better off by hundreds of millions
24 if not billions of dollars because it has
25 a jobs bank. It has to pay people

1 DELPHI CORPORATION 205

2 whether they work or not. The union has
3 1113 and 1114, which obligate the debtor
4 to go on making these payments until the
5 Court says otherwise. That could go on
6 for months or longer and that's hundreds
7 of millions of dollars. For every
8 employee, however, who opts into this
9 program, the debtor gets off the hook.

10 And finally, Your Honor, it would
11 be very unusual, and this case should not
12 be decided based on the hypothetical the
13 equity committee or the equity owner and
14 the committee are positing, that the
15 result of the 1113/14 litigation will be
16 that the union will not even get a claim
17 for the OPEB it's giving up.

18 Again, it doesn't effect the
19 reorganized debtor's ability to go
20 forward if the union gets a claim for
21 what it's taking less in the future for.
22 That's a lot more logical than assuming
23 it's going to give up for nothing and we
24 know that's not the case.

25 One party, one objector, did say

3 estimate is low. I want to confirm that
4 if everyone opts into the program, the
5 three billion estimate of the debtor
6 probably is low. General Motors will
7 probably have a general unsecured claim
8 more in the neighborhood of four billion
9 plus. But again, that doesn't affect the
10 viability, it doesn't affect the costs of
11 this program because we're only getting a
12 claim for things the debtors are
13 otherwise obligated to pay and it's a
14 pre-petition claim.

15 THE COURT: I guess someone looking
16 at this from afar might say why is GM
17 agreeing to accelerate, in terms of real
18 cash dollars, a claim that it might have
19 in a lesser amount. And I guess one spin
20 that the creditors' committee has put on
21 that is that GM's improving its position
22 in this case because of that, both by
23 fixing the OPEB at a higher number
24 perhaps and also by locking in the claim
25 against the parent company. What is your

1 DELPHI CORPORATION 207
2 response to that?

3 MR. BIENENSTOCK: The claim against

4 the parent company could have, at the end
5 of the day, a very low value. I think to
6 the extent one can speak simply for an
7 organization as large as General Motors,
8 it's fair to say the dominant reason why
9 we are agreeing to this program is that
10 it's a significant step forward in the
11 resolution of a critical supplier's labor
12 problems and for as long as it is a
13 critical supplier of General Motors,
14 solving so much of its labor problem in
15 one agreement makes us believe that it's
16 more likelihood we'll get to a final
17 agreement that will be good for everyone.

18 THE COURT: Okay. Thank you.

19 MR. BIENENSTOCK: Thank you.

20 MR. ZIMAN: Your Honor, I'm Ken
21 Ziman, on behalf of J.P. Morgan's pre-
22 petition agent. Very briefly, Your
23 Honor, we're to file papers on this but I
24 just want to let, for the record, state
25 that the pre-petition agent supports the

1 DELPHI CORPORATION 208

2 relief sought here. I mean, we are very
3 concerned about the global resolution
4 being obtained here and this step, which

5 we view as a reasonable step, can allow a
6 global resolution without a work
7 stoppage, you know, should be embraced by
8 the Court and the parties. For that,
9 I'll not take up any more of the Court's
10 time.

11 THE COURT: Okay. Okay. Mr.
12 Rosenberg. You were --

13 MR. ROSENBERG: Yeah, Your Honor,
14 just three or four sentences --

15 THE COURT: Okay.

16 MR. ROSENBERG: -- to crystallize
17 the committee's position because I think
18 it's been somewhat misrepresented here.
19 Ms. Ceccotti may be surprised to hear
20 that I completely agree with what she
21 said about (a) the importance of this
22 agreement and more importantly that today
23 is not the day to sort through the
24 committee's ultimate problems or issues.
25 And nobody ever suggested that they were.

1 DELPHI CORPORATION 209
2 And of course, Mr. Bienenstock is also
3 correct, I hardly think it's a surprise
4 that at this juncture in the case it is
5 the committee's belief that we are in

6 this situation because of what GM did
7 starting in 1999 and in one fashion or
8 another continuing to the present day.

9 And where that takes me, Your
10 Honor, is simply to make the following
11 point. Your Honor several times focused
12 upon the fact that this agreement
13 provides for new consideration for GM in
14 a number of respects. And of course that
15 is true and undisputed. But it is the
16 committee's position that it is indeed
17 GM's obligation to fix the problem which
18 it created for its own benefit way back
19 when.

20 Now that position either will or
21 won't ultimately prevail. That position
22 either will or won't get settled out over
23 time. All we're asking for today is that
24 that position not be prejudiced in an
25 unfair and unfortunate way. That's it.

1 DELPHI CORPORATION 210

2 THE COURT: But it sounds to me,
3 given Mr. Butler's remarks about going
4 through the channels of the existing
5 agreements, that those rights are pretty
6 well protected.

7 MR. ROSENBERG: Well, Your Honor,
8 if we became truly comfortable with that
9 we would agree and go home happy today.
10 As Your Honor pointed out, the language
11 of the various orders and provisions do
12 not necessarily support Mr. Butler's
13 statements. And of course, our real
14 problem is the terms of the employee
15 matters at hand.

16 THE COURT: But he made his
17 statements in open court and I didn't
18 hear anyone standing up and saying no,
19 no, no that's wrong. So --

20 MR. ROSENBERG: Well, perhaps Your
21 Honor then, could help fashion an order
22 that's consistent with what Mr. Butler
23 said in court and we will go away happy.

24 THE COURT: Okay. All right. I
25 have before me a motion for an order

1 DELPHI CORPORATION 211
2 under Section 363(b) of the Bankruptcy
3 Code to approve the debtor's entry into
4 and performance of what has been referred
5 to as the human capital hourly attrition
6 program.

7 They were set out in an agreement

8 attached to the motion which is a
9 tripartite agreement between the UAW, GM
10 and Delphi, labeled special attrition
11 program. The terms of that agreement, as
12 they pertain to the relationship between
13 GM and Delphi, have been somewhat further
14 clarified on the record of this hearing
15 as well as in earlier pleadings in
16 response to the four objections that were
17 raised to the motion, and I think the
18 record reflects those clarifications and
19 acknowledgements and perhaps the order
20 should as well.

21 I will approve the motion and
22 authorize the debtors to enter into and
23 perform the agreement as clarified on the
24 record under Section 363(b).

25 It is argued that the debtor does

1 DELPHI CORPORATION 212
2 not have the ability to seek approval of
3 the agreement under Section 363(b) for a
4 couple of reasons, and I guess I should
5 address that argument first before going
6 on to my reasons for approving the
7 motion.

8 It's contended, first, that because

9 this agreement would modify existing
10 agreements between the debtor and GM and
11 the UAW, that I cannot approve such
12 modifications under Section 363(b). I
13 believe that's not a valid argument. The
14 agreement, in large part, actually uses
15 old agreements to govern new arrangements
16 going forward, that were not required
17 under the old agreements between the
18 debtor and GM. And in any event, I
19 believe that the terms of the attrition
20 agreement are appropriate.

21 It's conceded by the creditors'
22 committee that they could be entered into
23 as a post-petition agreement with a post-
24 petition administrative claim priority
25 for obligations thereunder of the

1 DELPHI CORPORATION 213
2 debtors. The only difference here is
3 that GM has agreed, to the extent that it
4 is preserving the ability to assert a
5 claim here, that that claim will not have
6 the level of priority that would
7 otherwise apply under Bankruptcy Code sections
8 503 and 507, but would, rather, be a pre-petition
9 unsecured claim.

10 That type of voluntary
11 subordination is (a) permissible and (b)
12 in the interests of the estate. I've
13 read the Phar-Mor v. Strouss building
14 associates case cited by the Creditors' Committee
15 to me at oral argument, at 204 BR 948 from
16 the District Court, Northern District of Ohio,
17 1997; and I find that case inapposite.

18 That was a case in which one party
19 to an executory contract sought to amend
20 the provisions of the contract but the
21 other party refused to agree to the amendment.
22 Consequently, it asserted hornbook law which
23 is that a debtor cannot unilaterally amend an
24 executory contract without the consent --
25 well cannot unilaterally amend it, but

1 DELPHI CORPORATION 214
2 must either assume it in full or reject
3 it.

4 It's also argued that this motion
5 and this agreement should be incorporated
6 into a Chapter 11 plan, or I guess more
7 appropriately, into a disclosure
8 statement for a Chapter 11 plan, because
9 of the importance of this agreement to
10 the debtor's overall business and

11 ultimately because this is a
12 reorganization case, as opposed to a
13 liquidation case, to the debtor's
14 reorganization.

15 Now, again, I disagree with that
16 premise. First, this agreement does not
17 spell out the terms of a Chapter 11 plan--
18 that is, the distributions that will be
19 made to creditors. If anything, it
20 reduces the ability of one potential
21 administrative creditor to assert an
22 administrative claim. And that's a far
23 cry from a disguised Chapter 11 plan as
24 analyzing the Fifth Circuit's Braniff case.

25 Moreover, the Second Circuit has

1 DELPHI CORPORATION 215
2 been clear since the Lionel decision that
3 a debtor may take an action out of the
4 ordinary course, indeed may go so far as
5 to sell its entire business out of the
6 ordinary course, without having to take
7 that step through a Chapter 11 plan,
8 provided that the debtor has not bent
9 inappropriately to the pressure of a
10 constituent or constituencies but rather
11 has exercised good business judgment in

12 making its decision to take the action out
13 of the ordinary course.

14 The debtor correctly quotes the
15 Orion Pictures case for the proposition
16 that in connection with an action under
17 Section 363(b), the bankruptcy court
18 needs to review the debtor's exercise of
19 its business judgment, in the first
20 instance, applying its own business
21 judgment to the action proposed by the
22 debtor and generally to defer to applying
23 the business judgment standard to the
24 debtor's business judgment if the debtor has
25 pursued proper procedures and the like in

1 DELPHI CORPORATION 216
2 analyzing its decision.

3 Obviously when significant
4 constituencies have objected to the
5 proposed action out of the ordinary
6 course, the Court reviews their analysis
7 closely, as well; and it is my practice to
8 give less deference to the debtor's
9 business judgment in those situations and
10 to exercise more of my own in light of
11 the arguments raised by the objectors.

12 It is also argued here that because

13 of the importance of GM to the debtor's
14 business, GM being the debtor's largest
15 customer, that I should impose a strict
16 scrutiny standard here, likening GM to an
17 "insider." I have not done so because I
18 believe that while GM obviously has important
19 bargaining leverage here, that leverage is far
20 from one sided. Delphi and the union have
21 leveraged with GM, too. Moreover, it is clear
22 to me that, although obviously GM is a very
23 important customer to these debtors, it does
24 not control these debtors, as evidenced by
25 the Debtors' recent motion to reject various

1 DELPHI CORPORATION 217
2 agreements that they have with GM, and by the fact
3 that the debtors are actively engaged in
4 a process of analyzing their rights vis-
5 a-vis GM to ensure that GM, in the
6 debtors' Chapter 11 cases, does not get
7 any sort of inappropriate leg up or
8 inappropriate treatment.

9 So, in sum, I do not accept either
10 of those two objections to this motion.
11 In addition, I believe that while in any
12 large Chapter 11 case, all parties would
13 prefer more time to analyze a transaction

14 out of the ordinary course, that there
15 was appropriate notice of this
16 transaction.

17 First, the negotiations between the
18 three parties, I believe, were actively
19 contemplated and understood by the other
20 main constituencies in this case. I also
21 believe that there was an appropriate
22 level of information sharing both before
23 the agreement was entered into and
24 afterwards by the debtor with its various
25 constituencies and that there was a

1 DELPHI CORPORATION 218
2 sufficient basis to analyze the agreement
3 in light of the debtor's present
4 circumstances.

5 I'll address separately, the
6 objection that it is premature to enter
7 into this agreement, but as far as notice
8 is concerned, I believe that the parties
9 in interest had adequate notice to
10 analyze whether the agreement should be
11 entered into now or not.

12 I note specifically, that when I
13 approved the formation of an equity
14 committee, I did not contemplate that

15 this case would come to a halt while the
16 committee was formed and came up to speed,
17 and I reiterate that ruling now.

18 As far as the merits of this
19 agreement and the objections raised in
20 response to it, the agreement is, in my
21 view, an important step in the debtor's
22 Chapter 11 case but not by any means the
23 transformative event that the objection
24 by Appaloosa suggests that it is.

25 So I have reviewed it on its own in

1 DELPHI CORPORATION 219
2 light of the parties' best
3 predictions about what will happen in the
4 future but also what's appropriate to be
5 done at this point. The agreement
6 essentially provides benefits to all
7 three of the signatories, and that perhaps
8 should go without saying, or else they
9 wouldn't have entered into it. But it's
10 unfair to assume that because conceivably
11 the debtor is giving up something in
12 return for the benefits it's receiving,
13 that I should not approve the agreement.

14 Essentially, the agreement provides
15 an important option for the debtor's UAW

16 work force to exercise a right, in
17 essence, either to be bought out as part
18 of leaving the company or to migrate from
19 the company to GM. This right is
20 significant in that as both the debtor
21 and the Union have acknowledged, there is
22 tremendous uncertainty with regard to the
23 future of the debtor's operations in the
24 United States and the future of the debtors'
25 collective bargaining agreement.

1 DELPHI CORPORATION 220

2 It is, however, clear to me that
3 the debtors fully believe --and no one has
4 disputed this-- that it is very much in the
5 debtors' interest to have a substantially
6 reduced work force. It's also clear to
7 me that substantial claims would flow
8 from such a reduction under almost any
9 scenario.

10 What the debtors have done here is
11 facilitate that reduction in a way that's
12 acceptable to the union and also to GM, and
13 that will fix the amount of those claims
14 and allocate them in large measure in a
15 way that is not so detrimental to the
16 estate as to outweigh the benefits of

17 having a reduced work force. And in so doing
18 this gives a level of choice to the debtor's
19 workers, which I believe is not only good
20 business, but also fundamentally right.
21 The committee does not oppose that level
22 of choice being given to the workers.
23 Its objection fundamentally is with the
24 rights that GM would receive under the
25 agreement. As a result of the hearing, I

1 DELPHI CORPORATION 221
2 believe certain of the committee's fears
3 have proven not to be supported by the
4 agreement in that the agreement has been
5 clarified on the record in a number of
6 respects as regards to GM's rights upon
7 the debtor's performance of the
8 agreement.

9 Fundamentally, the committee
10 contends that the agreement gives GM an
11 undue benefit by enabling GM to assert
12 its claims in respect of paragraphs 4 and
13 7 under the U.S. Employee Matters
14 Agreement. I believe, however, that Mr.
15 Butler is correct in this respect. The
16 Employee Matters Agreement is an
17 agreement that in all likelihood would

18 not otherwise apply to the agreements that
19 GM is entering into here -- or the costs
20 that GU is agreeing to pick up. Nor would, in
21 all likelihood, the other agreements referred
22 to at this hearing.

23 Consequently, by limiting GM's
24 assertion of the claim to that agreement,
25 the debtor is actually reducing GM's

1 DELPHI CORPORATION 222
2 rights, which GM, I believe, could have
3 otherwise contended successfully would
4 have constituted a new post-petition
5 agreement that would have had to have
6 been not only renegotiated but also
7 would have given GM a post-
8 petition priority claim.

9 In addition, it is alleged that by
10 using the U.S. Employee Matters Agreement
11 as the basis for asserting a claim in
12 respect of the obligations that GM is
13 picking up here under paragraph 4 and 7,
14 GM will have a larger claim against the
15 estate than it would otherwise have if
16 matters just continued in the normal
17 course and at some point, either before
18 the collective bargaining agreement

19 expired, or thereafter, while the parties
20 McFetters were negotiating a new one,
21 obligations arose under the existing GM
22 agreements because of employees leaving,
23 benefits being curtailed or eliminated
24 and the like.

25 There's some strength to that

1 DELPHI CORPORATION 223
2 argument based on what's been represented
3 to me as the way that the claim would be
4 calculated under the U.S. Employee
5 Matters Agreement. However, I believe
6 that because it is based on -- that
7 calculation is based on actuarial
8 assumptions, the leg up, if you will,
9 that it is asserted GM would get, based
10 on those calculations, is very hard to
11 calculate and in my mind would not
12 outweigh the benefits of this agreement.

13 It's also alleged, with more
14 validity, that ultimately the OPEB
15 obligations would be negotiated down in
16 any event and therefore GM is going to
17 have the benefit of that downward
18 negotiation while at the same time being
19 able to assert a larger claim based on

20 current OPEB agreements here.

21 On that score I guess I have the
22 following points to say. It is not clear
23 to me, ultimately of course, what the
24 negotiation of OPEB will result in. I
25 assume there would be some reduction of

1 DELPHI CORPORATION 224
2 OPEB, but I certainly cannot assume that it
3 would completely go away, or anything
4 close to that.

5 Secondly I note that the debtor has the
6 benefit right now of the attrition of its
7 employees under the proposed agreement. Third,
8 I note that this agreement I believe, is a necessary
9 or an important step in enabling the debtor to
10 then move on to negotiating its own
11 collective bargaining agreement issues.
12 Clearly, if the debtor can offer up a
13 meaningful choice to its employees that
14 leads to significant attrition, the
15 negotiation of a new collective bargaining
16 agreement becomes, I hesitate to say
17 easier because I know it will be
18 difficult, but I believe it does become
19 easier and materially easier.

20 Ultimately, I go back to the

21 question I asked GM's counsel, Mr.
22 Bienenstock, which is why is GM agreeing
23 up front to shoulder out-of-pocket costs
24 now, in hundred cent dollars now, in this
25 agreement in return for receiving an

1 DELPHI CORPORATION 225
2 unsecured claim in Delphi's bankruptcy
3 case.
4 If one were attributing
5 Machiavellian motives to GM, one might
6 argue that the reason it is doing so is
7 to get a leg up in respect of that claim.
8 Ultimately, particularly since there's no
9 evidence as to how much of a leg up GM
10 would get, I don't accept that
11 Machiavellian view.
12 It seems to me, instead, that it's never
13 better to pay hundred cent dollars out in
14 return for an unsecured claim, and that
15 Mr. Bienenstock's explanation, which is
16 that GM is looking, fundamentally or first
17 and foremost, to assist a critical
18 supplier to it and secondly -- and he
19 didn't say this but I'll say it -- to
20 assist itself in regard to its labor
21 negotiations, is more apt. I believe that's

22 why GM is ultimately doing this.

23 So I believe that except as far as
24 the clarifications on the record are
25 concerned, the committee's objection

1 DELPHI CORPORATION 226
2 should be denied. The objection by
3 Wilmington Trust Company largely
4 overlapped the committee's objection,
5 except with regard to its concern that by
6 providing in the agreement that GM's
7 claim would be assertable against Delphi
8 Corporation, the parent, that GM was
9 again getting an inappropriate leg up on
10 other creditors. When this topic was
11 explored at the hearing, however, it was
12 clear to me that GM would be happy to
13 have a claim against all the debtors, as
14 is logical and that it is the debtors
15 themselves that have endeavored to limit
16 the claim to the parent company.

17 At the same time, the record is
18 clear that all of the rights of the operating
19 subsidiaries -- especially those that use UAW
20 workers who provide obviously services to
21 them in manufacturing car parts and working in
22 their plants -- are preserved vis-

23 a-vis any sort of claim that Delphi would
24 have against them and vice versa so that
25 if it appears that Delphi Corporation is

1 DELPHI CORPORATION 227
2 inappropriately shouldering the burden of
3 a GM claim in respect of workers who
4 perform services to benefit the operating
5 debtors, the record's clear that Delphi
6 Corporation is free to assert a claim
7 against those subsidiaries.

8 In my view, that's an intercompany
9 issue that need not require me to
10 disapprove this agreement, because it's
11 not spelled out to the contrary in an agreement
12 between GM, the UAW and Delphi.

13 And I trust that that issue will be
14 one of many issues that the parent
15 company creditors and the subsidiary
16 companies creditors will discuss in the
17 future. That does leave open, of course, the
18 concern that Wilmington Trust Company and
19 Appaloosa had that there should not be any claim
20 against Delphi Corporation. Their
21 argument, which I understand, is that
22 Delphi Corporation has the benefit of
23 numerous subsidiaries that are not

24 subject to collective bargaining
25 agreements and that are quite valuable

1 DELPHI CORPORATION 228
2 and that by having a claim against Delphi
3 Corporation, GM has the ability to assert a right
4 To share in that equity value in the non-unionized
5 subsidiaries.

6 On the other hand, Delphi Corporation is
7 the party to the existing agreements with GM and.
8 more importantly, to the collective bargaining
9 agreements, all of which creat potential claims
10 that this proposed agreement addresses.

11 It's almost inconceivable to me to
12 assume that Delphi Corporation could
13 receive the benefit of these payments and
14 the benefit of the attrition of the
15 employees and not ultimately be
16 responsible in some measure, either on
17 its own or shared with other
18 subsidiaries, for having received that
19 benefit. So I don't believe that that
20 objection should be sustained either.

21 Finally, Appaloosa, as has WTC,
22 raises the objection that I should not
23 give general authority to the debtors to
24 enter into similar agreements with their

25 other unions. I think the colloquy on

1 DELPHI CORPORATION 229
2 the record reflects my position on this. I
3 believe that because they would be, in
4 large measure, tripartite agreements,
5 and I don't have the existing agreements
6 involving GM or the other unions in front of me,
7 that I can give such blanket authority. On
8 the other hand, it's my view that having
9 approved this agreement, it is quite
10 likely, unless there really are different
11 material considerations involving the
12 debtor's rights against GM and/or the
13 other unions, that I would promptly approve
14 comparable agreements with the other
15 unions.

16 But as far as this motion is
17 concerned, I would not approve those
18 provisions. I guess it's paragraph 3 and
19 paragraph 6 of the proposed order that
20 would pertain to "reasonably comparable"
21 hourly attrition programs, although, as I
22 said, if they are in fact reasonably
23 comparable and don't raise different
24 issues than the issues raised by this
25 motion, I contemplate that they would be

1 DELPHI CORPORATION 230

2 approved promptly.

3 Finally, Appaloosa contends that it
4 is premature to approve this agreement
5 but that, rather, the agreement should
6 await the negotiation or litigation of
7 the debtor's recently filed motion under
8 Section 1113 of the Bankruptcy Code.

9 It is often facially appealing to
10 want to resolve all issues in a Chapter
11 11 case in one fell swoop. However, I
12 believe that the ability of the debtors
13 to resolve their remaining labor issues
14 is in fact greatly enhanced by their
15 entry into this agreement now and their
16 performance of this agreement now for the
17 reasons that I stated earlier.

18 In addition, I cannot predict the
19 result of those negotiations or the
20 result of a contested 1113 motion. It
21 does not appear to me on this record that
22 the benefits of this agreement would be
23 outweighed, however, by waiting to
24 determine the outcome of the Section 1113
25 motion, which to my understanding already

1 DELPHI CORPORATION 231
2 assumes significant attrition pursuant to
3 this program.

4 I also believe that the likelihood
5 of the debtors walking away without a
6 concomitant claim against their estates
7 in connection with either rejection or
8 determination over the course of time of the
9 OPEB liabilities is highly unlikely.

10 As far as the pension obligations
11 are concerned, as Mr. Butler says, those
12 are accrued in any event. So what
13 Appaloosa has asked me to do, in essence, is
14 to defer or to take the risk that this
15 agreement will go by the wayside pending
16 a result on a litigated basis, because I
17 don't believe on a negotiated basis that
18 result would pertain, whereby there would
19 be no claim asserted against the estate
20 comparable to the claim that GM would be
21 asserting here under this agreement in
22 respect of OPEB liabilities.

23 I do not believe that the record
24 reflects that there is such a likelihood
25 of that claim going away if I don't

1 DELPHI CORPORATION 232
2 approve this agreement that I would
3 question the debtors' or question my own
4 business judgment in approving this
5 agreement, which provides the distinct
6 benefits to the estate now that I've already
7 outlined.

8 It is certainly conceivable that
9 the debtors will, in the ensuing
10 negotiations, persuade the unions that in
11 the context of a comprehensive package
12 that enables the debtors to merge from
13 bankruptcy in a healthy condition to
14 reduce OPEB liabilities and the like.
15 But I don't see the analysis of that
16 process playing out in the way that Appaloosa
17 does, with no large surviving claims, and
18 consequently I believe that it's appropriate for
19 the debtors to enter into this agreement now.

20 Finally, I don't believe that one
21 can assume that this agreement would
22 simply be here waiting for those
23 negotiations to continue. Those future
24 negotiations -- and they're not just
25 negotiations with the unions but also

1 DELPHI CORPORATION 233

2 they are with GM, as hilighted by the
3 debtor's motion to reject various GM
4 agreements -- are going to be difficult.
5 And it's quite clear to me that if this
6 agreement were not approved today, the
7 issues raised in this agreement would be
8 right back in the pot in the mix of those
9 negotiations in a way that I don't see
10 would be beneficial to the estate.

11 So, for all of those reasons I'll
12 approve the motion, as modified. I think
13 what would be appropriate is for the
14 debtors to revise their order, circulate
15 it to the objectors, to the UAW and to the other
16 unions and I guess to the others who spoke
17 briefly today and conform it to the
18 transcript, obviously.

19 I don't think that it needs to be
20 meticulously worded. I don't think the
21 order should become an agreement but
22 should reflect the reservations made on
23 the record and the clarifications as to
24 the paragraphs of the agreement in which
25 GM is not going to be asserting a claim

1 DELPHI CORPORATION 234

2 and the like.

3 You can use the draft transcript
4 for that purpose. However, as far as my
5 ruling is concerned, again as I often do
6 when I cite cases or I give a long ruling,
7 I'll go over it and the revised version
8 will be my final ruling.

9 But certainly I understand the need
10 to proceed with this matter promptly so
11 you can use the draft version of the
12 transcript to work on the order.

13 MR. ROSENBERG: Your Honor, thank
14 you. I think it's probably obvious that
15 we will then be able to contact the court
16 reporter and obtain that draft
17 transcript?

18 THE COURT: Yes.

19 MR. BUTLER: Your Honor, I
20 appreciate -- this is the last matter on
21 the agenda for today. We appreciate your
22 Court's time.

23 THE COURT: Okay. Thank you.

24 (Whereupon this proceeding was
25 concluded.) (Time Noted: 4:42 a.m.)

3 I, Esther Accardi, hereby certify that
4 the foregoing is a true and correct
5 transcription, to the best of my ability, of
6 the sound recorded proceedings submitted for
7 transcription in the matter of:
8 Delphi Corporation.

9

10 I further certify that I am not employed
11 by nor related to any party to this action.

12

13 In witness whereof, I hereby sign this
14 date:

15 April 13, 2006

16

17 _____

18 Esther Accardi

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